

IMPEACHMENT ARTICLES REFERRED ON  
JOHN KOSKINEN (PART III)

---

---

HEARING  
BEFORE THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTEENTH CONGRESS  
SECOND SESSION

SEPTEMBER 21, 2016

**Serial No. 114-89**

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

U.S. GOVERNMENT PUBLISHING OFFICE

22-120 PDF

WASHINGTON : 2016

---

For sale by the Superintendent of Documents, U.S. Government Publishing Office  
Internet: [bookstore.gpo.gov](http://bookstore.gpo.gov) Phone: toll free (866) 512-1800; DC area (202) 512-1800  
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

BOB GOODLATTE, Virginia, *Chairman*

F. JAMES SENSENBRENNER, Jr., Wisconsin	JOHN CONYERS, JR., Michigan
LAMAR S. SMITH, Texas	JERROLD NADLER, New York
STEVE CHABOT, Ohio	ZOE LOFGREN, California
DARRELL E. ISSA, California	SHEILA JACKSON LEE, Texas
J. RANDY FORBES, Virginia	STEVE COHEN, Tennessee
STEVE KING, Iowa	HENRY C. "HANK" JOHNSON, JR., Georgia
TRENT FRANKS, Arizona	PEDRO R. PIERLUISI, Puerto Rico
LOUIE GOHMERT, Texas	JUDY CHU, California
JIM JORDAN, Ohio	TED DEUTCH, Florida
TED POE, Texas	LUIS V. GUTIERREZ, Illinois
JASON CHAFFETZ, Utah	KAREN BASS, California
TOM MARINO, Pennsylvania	CEDRIC RICHMOND, Louisiana
TREY GOWDY, South Carolina	SUZAN DELBENE, Washington
RAUL LABRADOR, Idaho	HAKEEM JEFFRIES, New York
BLAKE FARENTHOLD, Texas	DAVID N. CICILLINE, Rhode Island
DOUG COLLINS, Georgia	SCOTT PETERS, California
RON DeSANTIS, Florida	
MIMI WALTERS, California	
KEN BUCK, Colorado	
JOHN RATCLIFFE, Texas	
DAVE TROTT, Michigan	
MIKE BISHOP, Michigan	

SHELLEY HUSBAND, *Chief of Staff & General Counsel*  
PERRY APELBAUM, *Minority Staff Director & Chief Counsel*

# CONTENTS

SEPTEMBER 21, 2016

	Page
OPENING STATEMENTS	
The Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Committee on the Judiciary .....	1
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary .....	2
WITNESS	
The Honorable John Koskinen, Commissioner, Internal Revenue Service	
Oral Testimony .....	5
Prepared Statement .....	7
APPENDIX	
MATERIAL SUBMITTED FOR THE HEARING RECORD	
Material submitted by the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Ranking Member, Committee on the Judiciary .....	78
Material submitted by the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Committee on the Judiciary .....	83



## **IMPEACHMENT ARTICLES REFERRED ON JOHN KOSKINEN (PART III)**

**WEDNESDAY, SEPTEMBER 21, 2016**

HOUSE OF REPRESENTATIVES  
COMMITTEE ON THE JUDICIARY  
*Washington, DC.*

The Committee met, pursuant to call, at 10:07 a.m., in room 2237, Rayburn House Office Building, the Honorable Bob Goodlatte (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Sensenbrenner, Smith, Chabot, Issa, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy, Labrador, Farenthold, Collins, DeSantis, Walters, Buck, Ratcliffe, Trott, Bishop, Conyers, Nadler, Lofgren, Jackson Lee, Cohen, Johnson, Chu, Deutch, Gutierrez, Bass, Richmond, DelBene, Jeffries, Cicilline, and Peters.

Staff Present: (Majority) Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief Counsel; Zach Somers, Parliamentarian & General Counsel; Paul Taylor, Chief Counsel, Subcommittee on the Constitution and Civil Justice; (Minority) Perry Apelbaum, Staff Director & Chief Counsel; Danielle Brown, Parliamentarian & Chief Legislative Counsel; Aaron Hiller, Chief Oversight Counsel; David Greengrass, Counsel; and Veronica Eligan, Professional Staff Member.

Mr. GOODLATTE. Good morning. The Judiciary Committee will come to order. Without objection, the Chair is authorized to declare a recess of the Committee at any time.

We welcome everyone to this morning's hearing on the "Impeachment Articles Referred on John Koskinen (Part III)," and I will begin by recognizing myself for an opening statement.

The Constitution sets forth a system of checks and balances which grants each branch of government tools to help ensure that no one branch of government attains too much power. The legislative branch's tools include the power to write the laws, the power of the purse, the impeachment power, the power to censure, among others. These tools empower Congress to exert oversight over the executive and judicial branches, including rooting out corruption, fraud, and abuse by government officials, and taking further disciplinary action on behalf of the American people when warranted.

The duty to serve as a check on the other branches, including against corruption and abuse, is a solemn one, and Congress does not and must not take this responsibility lightly. That is why this Committee has scheduled this hearing today.

In 2013, the American people first learned that their own government had been singling out conservative groups for heightened review by the IRS as they applied for tax-exempt status. This IRS targeting scandal was nothing short of shocking. It was a political plan to silence the voices of groups representing millions of Americans. Conservative groups across the Nation were impacted by this targeting, resulting in lengthy paperwork requirements, overly burdensome information requests, and long, unwarranted delays in their applications.

In the wake of this scandal, then-IRS official Lois Lerner stepped down from her position, but questions remain about the scope of the abuses by the IRS.

The allegations of misconduct against Mr. Koskinen are serious and include the following. On his watch, volumes of information crucial to the investigation into the IRS targeting scandal were destroyed. Before the tapes were destroyed, congressional demands, including subpoenas for information about the IRS targeting scandal, went unanswered and were not complied with. Mr. Koskinen provided misleading testimony before the House Oversight and Government Reform Committee concerning IRS efforts to provide information to Congress.

These are very serious allegations of misconduct, and this Committee has taken these allegations seriously. Over the past several months, this Committee has meticulously pored through thousands of pages of information produced by the investigation into this matter. On May 24, this Committee held a hearing at which the House Oversight and Government Reform Committee formally presented its findings and evidence to the Members of this Committee. Then, on June 22, this Committee held a second hearing to allow outside experts to assess and comment on the evidence presented to the Committee at its May 24, 2016, hearing and the options for a congressional response.

Today we hold a third hearing and hear from Mr. Koskinen himself. I look forward to hearing from Mr. Koskinen today.

It is now my pleasure to recognize the Ranking Member of the Committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Chairman Goodlatte, Members.

And I want to thank first Commissioner Koskinen for joining us today on short notice and under these unusual circumstances.

Last week, a handful of my colleagues attempted to force a vote on your impeachment, and when it appeared that they would fall short of the necessary votes, that effort was abandoned and this hearing was scheduled instead.

I hope that my colleagues now see what I see when I look back at the history of impeachment in the House of Representatives, which we all have an obligation to do. No matter how you feel about a particular official, no matter what we think of his or her agency, successful impeachments are bipartisan efforts, and partisan attacks cloaked in the impeachment process are doomed from the start.

Mr. Chairman, the effort to impeach Commissioner Koskinen is destined to fail on both the merits and as a matter of process, and

if they somehow force this measure to the floor again, I fear it will set a terrible precedent.

On the merits, the commissioner's critics simply have not proved their case. In fact, every other investigation to have examined these facts has refuted the charges against Commissioner Koskinen. The Senate Finance Committee, in a report that serves as the only bipartisan account of the matter, found no evidence that the commissioner had intent to mislead Congress at any time.

The Department of Justice "found no evidence that any IRS official acted based on political, discriminatory, corrupt, or other inappropriate motives" and, "no evidence that any official attempted to obstruct justice."

The Treasury Inspector General for Tax Administration, again, found no evidence to show that IRS employees had been directed to destroy or hide information from Congress.

Despite these findings, some Members continue to insist that the commissioner "ordered 24,000 emails erased before Congress could review them." Citing zero evidence to back the claim, independent fact checkers rated this statement as categorically false.

There is simply no evidence that the commissioner has acted with intentional bad faith in his leadership of the Internal Revenue Service. But even if there were some evidence of wrongdoing, the push to impeach the commissioner on the House floor without even basic due process in the Committee is wildly misguided.

According to parliamentarians of the House past and present, the impeachment process does not begin until the House actually votes to authorize this Committee to investigate the charges. In other words, this is not an impeachment hearing. Merely including the word "impeachment" in the title doesn't do the job at all. And at an actual impeachment hearing, the commissioner would be represented by counsel and he would have the right to present evidence, the right to question the evidence presented against him.

In this case, by contrast, the commissioner has been denied access to the transcripts of interviews conducted by the House Oversight Committee, even though we are told that those transcripts were key in forming the charges against him.

Many Members of this Committee are in the same position, I might add. I am not alone in being skeptical of short process or noting the importance of a full and independent investigation by this Committee.

In 2006, Mr. Sensenbrenner, the gentleman from Wisconsin, argued, "Only after the House Judiciary Committee has conducted a fair, thorough, and detailed investigation will Committee Members be able to consider whether Articles of Impeachment might be warranted."

In 2010, Mr. Chairman, you expressed confidence in our impeachment task force, because it had conducted an exhaustive investigation. That investigation included, in your words, "reviewing the records of past proceedings, rooting out new evidence that was never considered in previous investigations, conducting numerous interviews and depositions with firsthand witnesses, and conducting hearings to take the testimony of firsthand witnesses and scholars."

All of that process is missing here. Yes, we have it within our power to skip these steps, but what kind of precedence does that set? Never in the history of this body have we impeached a government official without first proving that he has acted in deliberate bad faith. Never in modern practice have we declined to provide the accused with the most basic due process, the right to counsel, the right to present evidence, and the right to question the evidence against him.

If the commissioner's critics have their way, I fear we will have a new rule going forward. The House may impeach any government official for any reason without supplying evidence of deliberate wrongdoing, without an independent investigation, and without regard to basic fairness toward the accused.

Forcing a vote in this manner will certainly not result in the removal of the commissioner. Even if his critics succeed here, senators of both parties have already stated their intent to bury the matter. And in the process, I fear we will have stripped our responsibilities of their weight and dignity and turned impeachment from a constitutional check of last resort into a tool of political convenience, and I cannot accept that, and none of us should.

Commissioner Koskinen, thank you again for your willingness to be here today. Stick to the law and the facts, and you will be fine. I yield back, Mr. Chairman, and I thank you.

Mr. GOODLATTE. The Chair thanks the gentleman.

Without objection, all other Members' opening statements will be made a part of the record.

We welcome our distinguished witness.

And, Commissioner, if you would please rise, I will begin by swearing you in.

Do you swear that the testimony that you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?

Thank you. Let the record show that the witness answered in the affirmative.

Commissioner John Koskinen was sworn in as the 48th IRS commissioner on December 23, 2013. Prior to his appointment, Mr. Koskinen served as the nonexecutive chairman of Freddie Mac from 2008 to 2012 and as acting chief executive officer in 2009. Previously, Mr. Koskinen served as president of the U.S. Soccer Foundation, deputy mayor and city administrator of Washington, D.C., assistant to the President, and chair of the President's Council on Year 2000 Conversion, and deputy director at the Office of Management and Budget. He holds a law degree from Yale University of Law and a bachelor's degree from Duke University.

Mr. Koskinen, you are welcome. Your entire testimony will be made a part of the record, and we ask that you summarize your testimony in 5 minutes. Your written statement, as I said, will be made a part of the record. And you see a timing light on the table. Please help us. We have a lot of Members with a lot of questions to ask.

**TESTIMONY OF THE HONORABLE JOHN KOSKINEN,  
COMMISSIONER, INTERNAL REVENUE SERVICE**

Mr. KOSKINEN. Thank you. Good morning, Chairman Goodlatte, Ranking Member Conyers, Members of the Committee. Thank you for the opportunity to answer questions here today.

I understand the extraordinary responsibilities entrusted to this Committee. I appreciate both your willingness to hear from me and the serious and fair-minded approach you have taken on this charge of—

[Audio malfunction in hearing room.]

Mr. KOSKINEN. All right. Does that count against my time?

All right. Thanks. I will do my best today to answer your questions, and I am committed to full cooperation. I recognize the obligation all public servants share to be responsive to Congress to the best of our abilities. That means listening and responding to feedback and criticism, acknowledging mistakes, and working diligently to improve.

Let me note at the outset how much I deeply regret our inability to bring the (c)(4) issue to a close in a way that satisfies all Americans and Members of Congress. I understand the level of suspicion and distrust caused by the IRS' failure to properly handle applications for social welfare status based solely on the names of the organizations.

I took this job in large part to help restore confidence in the IRS and to ensure that the agency never returned to the unacceptable practices that had occurred before I arrived. I believe we have made real progress during my tenure in ending the practices that gave rise to the concerns, addressing operational weaknesses, creating a culture of risk management, and working to reassure taxpayers that our tax system treats taxpayers fairly.

The tax system only works if taxpayers are confident that the IRS will treat them fairly and that it doesn't make any difference who they are, what organization or political party they belong to, or whom they voted for in the last election. This is an important principle to us at the IRS.

And no one, in addition, should have to wait years for an answer to a question or a request for a determination of any kind.

Congress also has a right to expect that reforms to restore the public's trust in a nonpartisan and effective IRS will be implemented fully. I have devoted my energies as commissioner to that goal, and the inspector general has acknowledged that real progress has been made in implementing all of his recommendations. For instance, the IRS eliminated long ago the use of the "Be on the Lookout," or BOLO lists, as they are known, that had resulted in the improper scrutiny of a number of applicants as described in TIGTA's May 2013 report.

Mr. GOODLATTE. Mr. Commissioner, I recommend you suspend for the moment while we try to cure this problem.

Mr. KOSKINEN. All right.

[Audio malfunction in hearing room.]

Mr. KOSKINEN. Well, let's see how we do.

Mr. GOODLATTE. Let's go ahead.

Mr. KOSKINEN. All right. As I noted, we have eliminated the BOLO lists. The IRS has also offered an expedited approval process

for organizations that experience delays in the processing of their applications for 501(c)(4) status.

Continuing our efforts to restore public confidence in the IRS will remain my top priority every day that I am fortunate enough to continue to serve.

I also understand there are significant remaining questions on the minds of some Members about the IRS response to congressional inquiries on my watch. I stand ready to answer these questions today.

I responded honestly and in good faith as events unfolded, particularly in response to the discovery that Lois Lerner's hard drive had crashed in 2011. From the start, I directed IRS staff to cooperate fully with Congress and to recover lost information wherever possible, and I testified to the best of my knowledge.

But the truth is, we did not succeed in preserving all of the information requested and some of my testimony later proved mistaken. I regret both of those failings.

I can also tell you that, with the benefit of hindsight, even closer communication with Congress would have been advisable. But my commitment is and always has been to tell you and all Committees of the Congress the truth and to address issues head on.

I accept that it is up to you to judge my overall record, but I believe that impeachment would be improper, it would create disincentives for many good people to serve, and it would slow the pace of reform and progress at the IRS.

Again, I appreciate the opportunity to be here and look forward to answering your questions.

[The prepared statement of Mr. Koskinen follows:]

**WRITTEN STATEMENT OF  
JOHN A. KOSKINEN  
COMMISSIONER  
INTERNAL REVENUE SERVICE  
BEFORE THE  
HOUSE JUDICIARY COMMITTEE  
ON ALLEGATIONS OF MISCONDUCT BY THE IRS COMMISSIONER  
SEPTEMBER 21, 2016**

**INTRODUCTION**

Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee, thank you for the opportunity to answer questions here today. I understand the extraordinary responsibilities entrusted to this Committee. I appreciate both your willingness to hear from me and the serious and fair-minded approach you have taken to the discharge of your duties.

I will do my best today to answer your questions and I am committed to full cooperation. I recognize the obligation all public servants share to be responsive to Congress to the best of our abilities. That means listening and responding to feedback and criticism, acknowledging mistakes and working diligently to improve.

Let me note at the outset how much I deeply regret our inability to bring the C-4 issue to a close in a way that satisfies all Americans and members of Congress. I understand the level of suspicion and distrust caused by the IRS's failure to properly handle applications for social welfare status based solely on the names of the organizations. I took this job in large part to help restore confidence in the IRS and to ensure that the agency never returned to the unacceptable practices that had occurred before I arrived. I believe we have made real progress during my tenure in ending the practices that gave rise to concerns, addressing operational weaknesses, creating a culture of risk management, and working to reassure taxpayers that our tax system treats taxpayers fairly.

The tax system only works if taxpayers are confident that the IRS will treat them fairly and that it doesn't make any difference who they are, what organizations or political party they belong to, or whom they voted for in the last election. This is an important principle to us at the IRS. And no one should have to wait years for an answer to a question or a request for a determination of any kind.

The Congress also has a right to expect that reforms to restore the public's trust in a nonpartisan and effective IRS will be implemented fully. I have devoted my energies as Commissioner to that goal. The IRS accepted all of the recommendations made by the Inspector General in his May 2013 report and implemented all but one. The steps taken by the IRS to implement the

recommendations include: eliminating the use of inappropriate criteria; re-training employees; expediting the processing of section 501(c)(4) applications; and instituting a quality review process to assure that no unnecessary or improper information requests are sent to applicants.

One of the most significant actions taken in response to the Treasury Inspector General for Tax Administration (TIGTA) report was eliminating use of "Be On the Lookout" (BOLO) lists that had resulted in the improper scrutiny of a number of applicants as described in TIGTA's May 2013 report.

Given recent litigation on this issue, I believe it is important to emphasize that our Exempt Organizations division ended the use of the BOLO lists more than three years ago. I have repeatedly stated this point in congressional testimony and in public speeches. Other independent parties, including TIGTA, have also confirmed this point. The IRS and its leadership team remain absolutely committed to avoiding any selection and further review of determination requests based only on names and policy positions of the applicant. There should be no doubt on this point, or regarding the continued, ongoing commitment by the IRS to be guided by the tax law and nothing else.

Another point that has been raised in recent litigation is that the applications of a few organizations that were pending at the time of TIGTA's May 2013 report are still unresolved. The applications of these organizations remain pending because the organizations are engaged in litigation with the government, and the IRS has a longstanding policy of ordinarily suspending administrative action on a pending application if an issue involving the organization's exempt status is in litigation. Nonetheless, I recently asked our Exempt Organizations leadership to consult the Department of Justice (DOJ) and attempt to resolve the applications that remain pending by making determinations as soon as practicable.

I would note that in 2013, as part of its actions to implement TIGTA's recommendations, the IRS offered an optional expedited approval process for organizations whose applications for 501(c)(4) status had been pending for more than 120 days as of May 28, 2013. Currently, the applications of 142 of the 145 organizations, or 98 percent, included in the expedited process have been resolved one way or another. As noted above, the applications of the remaining three organizations have not been resolved because they opted for litigation.

After reviewing our actions in response to the May 2013 report, TIGTA issued a follow-up report in March 2015 that noted the IRS had taken "significant actions" to address their recommendations.

The work done by the IRS on these issues also included accepting recommendations made by the Senate Finance Committee in the comprehensive report it issued in August 2015 after a two-and-a-half year investigation.

As I testified to the Finance Committee in October of 2015, the IRS accepted all the recommendations in the Committee's report that were within our control – that is, those that did not involve tax policy matters or legislative action. They included 15 of the report's 18 bipartisan recommendations. We also accepted and have implemented all of the recommendations within our control in the separate reports prepared by the Majority and Minority Members of the Committee.

Continuing our efforts to restore public confidence in the IRS will remain my top priority every day that I am fortunate enough to continue to serve.

I also understand that there are significant remaining questions on the minds of some Members about the IRS response to Congressional inquiries on my watch. I stand ready to answer those questions today. I responded honestly and in good faith as events unfolded, particularly in response to the discovery that Lois Lerner's hard drive had crashed in 2011. From the start, I directed IRS staff to cooperate fully with Congress and to recover lost information where possible, and I testified to the best of my knowledge. But the truth is that we did not succeed in preserving all of the information requested and some of my testimony later proved mistaken. I regret both of those failings. I can also tell you that, with the benefit of hindsight, even closer communication with Congress would have been advisable. But my commitment is, and always has been, to tell you the truth and to address issues head on.

As you know, there has been considerable public dialogue regarding the legal standards for impeachment, regular order and due process for impeachment proceedings, and the impact impeachment could have on the country's tax system. I am attaching to this statement a compilation of materials which you may have seen, but which have not been organized in one place. The attachments include statements from distinguished constitutional law and tax professors, statements from tax professionals, statements from former IRS Commissioners, letters from my counsel, and the viewpoints of editorial boards from prominent publications across the country. All of them maintain that impeachment is not appropriate in this circumstance.

I accept that it is up to you to judge my overall record, but I believe that impeachment would be improper. It would create disincentives for many good people to serve. And it would slow the pace of reform and progress at the IRS. I hope that, following this hearing, the Committee will decide against reporting to the House floor a resolution authorizing a formal impeachment proceeding. Should the Committee take that step, however, I am fully prepared to assist the Committee in developing a solid and vetted factual and legal record that Members can rely on to exercise their constitutional responsibility.

Chairman Goodlatte, Ranking Member Conyers, and Members of the Committee, this concludes my statement.

Mr. GOODLATTE. Thank you, Commissioner.

We will now proceed under the 5-minute rule with questions, and I will begin by recognizing myself.

The report of investigation by the Treasury Inspector General for Tax Administration, or TIGTA, concludes in its 2015 report regarding congressional requests for emails that, "The investigation revealed that the IRS did not put forth an effort to uncover additional responsive emails. None of the IRS employees involved had been asked prior to the June 30, 2014, request from TIGTA to find any backup tapes or the server hard drives associated with the NCFB Exchange 2003 server, which would have contained responsive Lerner emails. The investigation determined that if the IRS would have conducted a search for the existence of backup tapes, they would have found the necessary backup tapes that contained Lerner's missing emails prior to when those tapes were degaussed in March 2014."

Mr. Koskinen, is there anything inaccurate in that finding of the Treasury Inspector General for Tax Administration, and if so, what is inaccurate about it?

Mr. KOSKINEN. No, nothing inaccurate in that. I would be happy to explain to you my understanding of how that happened, but the report is accurate.

Mr. GOODLATTE. Do you believe that it was the duty of the IRS commissioner to, as the Treasury Inspector General for Tax Administration stated, put forth an effort to uncover additional responsive emails to Congress' inquiries, yes or no?

Mr. KOSKINEN. Yes.

Mr. GOODLATTE. The report of investigation by the Treasury Inspector General for Tax Administration also concluded in its 2015 report as follows: "The investigation revealed that the backup tapes were destroyed as a result of IRS management failing to ensure that a May 22, 2013, email directive from IRS chief technology officer concerning the preservation of electronic email media was fully understood and followed by all of the IRS employees responsible for handling and disposing of email backup media."

Is there anything inaccurate in that finding of the Treasury Inspector General for Tax Administration?

Mr. KOSKINEN. No.

Mr. GOODLATTE. Do you believe that it was the duty of the IRS commissioner to, as the Treasury Inspector General for Tax Administration stated, to ensure that a May 22, 2013, email directive from IRS technology officer concerning the preservation of electronic email media was fully understood and followed by all of the IRS employees responsible for handling and disposing of email backup media? And I would appreciate a yes-or-no response to that.

Mr. KOSKINEN. Yes, to the extent the IRS commissioner has control over that.

Mr. GOODLATTE. The official IRS Web site in its section describing you, Commissioner John Koskinen, states, "Mr. Koskinen manages an agency of about 90,000 employees and a budget of approximately \$10.9 billion." You are the top manager at the IRS, so when the Treasury Inspector General for Tax Administration concluded that the IRS did not put forth an effort to uncover additional responsive emails and that the backup tapes were destroyed as a re-

sult of IRS management failing, the inspector general was referring to you, the manager of the IRS. Is that correct?

Mr. KOSKINEN. As the leader of the organization, I am responsible for the management of it. There are a lot of managers there, but ultimately any CEO, any director of the organization is responsible for its operations.

Mr. GOODLATTE. So after you received the congressional subpoena which affirmatively required that you protect all emails related to this subject, what affirmative steps did you take personally to ensure all responsive documents were preserved?

Mr. KOSKINEN. I met with senior executives and was assured that an appropriate document retention order had been put out the prior year. The woman acting as my counsel at the time sent a follow-up memo in February to the IT department to remind them that they ensure that all of the available information be preserved, and I was assured that that was being done.

Mr. GOODLATTE. Did you send anyone to different locations where emails are degaussed or destroyed, if you will, and instruct them not to destroy any emails without first going through the persons responsible for your responsibility to respond to the subpoena and say, make sure that no emails are destroyed without first verifying that they are not related to this congressional subpoena?

Mr. KOSKINEN. I did not personally do that. I was assured that managers understood the impact of the document retention request or order in 2013 before I arrived, and the follow-up in February 2014, I was assured, would make it clear to employees and managers everywhere to preserve documents. We were at that point 8 months into a massive document search, it seemed to me everybody would understand the goal. And the instruction to people was to produce all of the information as quickly as we could wherever it was.

Mr. GOODLATTE. But apparently that message didn't get to the people who actually do the work of destroying emails.

Mr. KOSKINEN. It apparently got to everyone but two employees on the midnight shift in Martinsburg. And at the time that was revealed, which was a year after the hearings in 2014, I said that that was a mistake, it shouldn't have happened, and I took responsibility for it.

Mr. GOODLATTE. My time has expired. Thank you.

The Chair recognizes the gentleman from Michigan for his questions.

Mr. CONYERS. Thank you, Chairman Goodlatte.

And welcome again to the Committee, sir.

Yesterday, the Chairman and I received a letter from our colleagues and some 32 signatures.

And I ask, Mr. Chairman, that this letter be made a part of the record.

Mr. GOODLATTE. Without objection, it will be made a part of the record.

Mr. CONYERS. Commissioner Koskinen, this letter cites the example of one of our colleagues who claims, "The head of the IRS ordered 24,000 emails erased before Congress could review them." Commissioner, did you order the destruction of 24,000 emails in an attempt to obstruct congressional investigators?

Mr. KOSKINEN. I did not.

Mr. CONYERS. Of course you didn't. According to PolitiFact, there is no, zero evidence to support this claim.

The letter also cites to an exchange of letters which J. Russell George, the Treasury Inspector General for Tax Administration.

Mr. Chairman, I ask that this letter be made a part of the record as well.

Mr. GOODLATTE. Without objection, it will be made a part of the record.

Mr. CONYERS. Thank you.

In 2015, the inspector general released a report that concluded no evidence was uncovered that any IRS employees had been directed to destroy or hide information from the Congress. This same conclusion was independently reached by the Senate Finance Committee and the Department of Justice. Last week, my colleagues wrote to the inspector general to ask him if he had obtained any evidence whatsoever over the past year to cause his office to change its conclusion. He responded within a day, and the answer was no.

Commissioner Koskinen, to your knowledge, have any of the underlying facts changed since the Senate Finance Committee, the Department of Justice, and the Treasury inspector general concluded that there is no evidence of your intent to mislead Congress or obstruct the investigation?

Mr. KOSKINEN. No.

Mr. CONYERS. I spoke earlier about the precedent of the House, which has always provided some basic due process to an accused official. For example, in 2010, we allowed Judge Porteous to submit evidence, call witnesses, and cross-examine others. In 1996, we allowed counsel for President Clinton to do the same. In 1874, this Committee allowed Secretary of War William Belknap the opportunity to explain, present witnesses, and cross-examine witnesses.

But here in 2016, I understand that you have not been allowed to review the evidence against you. The Oversight Committee conducted over 50 transcribed interviews and claims that those interviews were key to forming the charges against you.

Mr. Commissioner, have you asked to review these transcripts?

Mr. KOSKINEN. We have.

Mr. CONYERS. Have you been given an opportunity to review them?

Mr. KOSKINEN. No.

Mr. CONYERS. Do you believe they might include evidence that clears you of any of these charges?

Mr. KOSKINEN. I do. If there were any evidence there that I had actually indicated or told anyone to impede the operations of the Congress, destroy, or mislead the Congress, I assume someone would have already quoted it. So I assume that those 50 depositions would support the fact that I did nothing to impede the operation of the Congress, I gave no instructions to anyone to do anything other than fully cooperate with the requests of the Congress.

Mr. CONYERS. I thank you, sir, for your testimony.

And, Mr. Chairman, I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from Texas, Mr. Smith, for 5 minutes.

Mr. SMITH. Mr. Chairman, this Administration seems to have set a record for the number of agency heads who have wrongly deleted work-related emails, the number of Federal employees who have pled the Fifth Amendment to avoid incriminating themselves, and the number of officials who have failed to respond to lawfully served subpoenas.

Even in this deplorable company, one agency stands out. The Internal Revenue Service targeted organizations solely on the basis of their conservative views. We expect this kind of behavior from dictatorships and totalitarian governments, not from the United States of America's Government. It represents a direct attack on freedom of religion, it represents a direct attack on freedom of speech, and thus an attack on our Constitution and our democracy.

That this corruption of power continued unrestrained for several years can only lead to one conclusion: Such conduct is an abuse of office that was condoned by the Administration and warrants stiff penalties.

Mr. Chairman, I will yield the balance of my time to the gentleman from Ohio, Jim Jordan.

Mr. JORDAN. I thank the gentleman for yielding.

Mr. Koskinen, I am going to read from the articles of impeachment. On page 2, it says, "On March 4, 2014, the Internal Revenue Service magnetically erased 422 backup tapes." Is that statement true?

Mr. KOSKINEN. Yes.

Mr. JORDAN. Were you commissioner at the time that these tapes were erased?

Mr. KOSKINEN. Yes.

Mr. JORDAN. Was there a subpoena in place for the very information that was erased?

Mr. KOSKINEN. Yes.

Mr. JORDAN. More than one subpoena, right? There were two subpoenas.

Mr. KOSKINEN. Well, the subpoenas asked for specific information. The assumption is that some of that information was on those tapes.

Mr. JORDAN. It is not the assumption. It was on those tapes, because it was from the critical time period when Ms. Lerner's hard drive had crashed.

Mr. Koskinen, who is Kate Duvall?

Mr. KOSKINEN. Pardon?

Mr. JORDAN. Who is Kate Duvall.

Mr. KOSKINEN. Kate Duvall was serving as counselor of the commissioner.

Mr. JORDAN. When we got her bio, it said, counselor to the commissioner, said she advised on high-profile investigations, and she was a member of your senior management team. Is that accurate?

Mr. KOSKINEN. Yes.

Mr. JORDAN. In her deposition in front of the Oversight Committee, Ms. Duvall said she learned on February 2, 2014, about Lois Lerner's computer crash and missing emails. So on February 2, the counselor to the commissioner, in senior management, working on high-profile investigations, learns evidence is missing, and

1 month later, March 4, the backup tapes that contain this evidence are destroyed.

What a coincidence, Mr. Koskinen. One month after your top counselor learns Ms. Lerner's hard drive has crashed and there are missing emails, the backup tapes, the secondary source; the primary source is gone, a month later the backup tapes are destroyed.

Now, here is what is also interesting. Those backup tapes were supposed to have been destroyed months and months beforehand, weren't they, Mr. Koskinen?

Mr. KOSKINEN. Yes. And a large number of them had been destroyed in 2012 and 2013.

Mr. JORDAN. In fact, you testified to this. You said this. "Ms. Lerner"—this is testimony in front of the Oversight Committee—you said, "Ms. Lerner's hard drive had crashed in June 2011. As a result, certain emails could not be retrieved. Recovery tapes containing data for that period no longer existed." False statement, they did, but they were supposed to have been erased. This data was retained on tapes for only 6 months.

So they were supposed to have been erased actually 2 years prior to the date that they were, but they somehow survived. They somehow survived. And then, exactly 1 month, 30 days, after your top counselor, Kate Duvall, in senior management, learns that the primary source, the emails, are missing, these backup tapes that have survived for 2 years suddenly get destroyed. And we are supposed to believe that is just a coincidence, that just happened by chance?

Mr. KOSKINEN. The inspector general spent a year looking into exactly that subject and came up with the conclusion, after interviewing over 50 witnesses, that that was totally a mistake by two employees on the midnight shift in Martinsburg—

Mr. JORDAN. The old—

Mr. KOSKINEN [continuing]. That no one had—

Mr. JORDAN. The old—

Mr. KOSKINEN [continuing]. No one—I am sorry.

Mr. JORDAN. The old midnight shift guys in Martinsburg excuse. Okay.

Mr. KOSKINEN. Well, that is the IG's report after a year.

Mr. JORDAN. Okay. Well, let me read one other statement to you, again from the articles of impeachment. This is only page 3, article III. On June 20, 2014, Commissioner Koskinen testified, "Since the start of this investigation, every email has been preserved, nothing has been lost, nothing has been destroyed."

Is that statement true, Mr. Koskinen?

Mr. KOSKINEN. At the time, that was what I had been informed and what I believed. A year later, or 9 months—

Mr. JORDAN. Whoa—

Mr. KOSKINEN. That was—

Mr. JORDAN. It could have been—

Mr. KOSKINEN. It was—

Mr. JORDAN. It could not have been true at the time, because that says—the date is June 20, 2014.

Mr. KOSKINEN. That is correct.

Mr. JORDAN. And you just told me on March 4, the first question I asked you, on March 4, 3 months before that, March 4, 2014, that the IRS had destroyed 422 backup tapes.

Mr. KOSKINEN. That is correct.

Mr. JORDAN. So how is this statement true that you made under oath to a congressional Committee?

Mr. KOSKINEN. The statement was not correct in light of that evidence, which I did not know.

Mr. JORDAN. So the statement wasn't true?

Mr. KOSKINEN. The statement I thought was true. It was not true on the basis of the evidence that we discovered later.

Mr. JORDAN. Mr. Chairman, this is the problem. You think about any of the folks we represent, any of the constituents I represent in the Fourth District of Ohio has this same fact pattern, where they lose documents and then a month later—they are being audited by the IRS, they lose documents, a month later they destroy the backup disk, and it is fine, they can get away with that?

This is what so many Americans are frustrated about, this double standard. Mr. Koskinen can lose documents—excuse me—the IRS can lose documents, then destroy the backup source, the backup tapes, and nothing happens. Any American, that happens to them, they are in big trouble, and everybody knows it.

All we are asking is this guy no longer hold this office. That is all we are asking. And in light of this fact pattern, I think that is the least we can do.

I yield back.

Mr. GOODLATTE. The time of the gentleman from Texas has expired.

The gentleman from New York is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

In your opening statement, you mentioned reviewing thousands of pages of documents related to these charges. Does the Committee majority have access to the unedited transcripts of interviews conducted by the Oversight Committee?

Mr. GOODLATTE. You should direct your questions to the witness.

Mr. NADLER. I am directing my question to the Chairman. Parliamentary inquiry. And please stop the clock. It is a parliamentary inquiry.

Mr. GOODLATTE. We do not think so, but—

Mr. NADLER. You do not think that the majority has access.

Mr. GOODLATTE. No.

Mr. NADLER. Well, I would request that the minority at least, if the majority wishes, that is your prerogative—that I request the minority have access to these documents.

Mr. GOODLATTE. The Chair will take your request under advisement as we ascertain whether or not your question is answered in the affirmative. If so, then we obviously think it should be.

Mr. NADLER. We are going forward with impeachment hearings that are the purview of this Committee. I think this Committee ought to see all of the relevant evidence. But that is self-evident.

Let me just say before I ask Mr. Koskinen some questions that Mr. Jordan's questions—wasn't this true then, yes; did you know it was true then, no; did you tell the truth then as you knew it, yes—that fact pattern shows nothing about impeachment, obviously. All it shows is that he didn't know at the time he was asked the question. He told the truth as he then knew it.

Mr. Koskinen, Commissioner, thank you for being here.

The Senate Finance Committee, the Department of Justice, and the Treasury Inspector General for Tax Administration have all looked into the accusations against you and each of them has independently concluded there is no evidence to support these charges. Your critics have not made their case, nor do they have the votes to force impeachment on the House floor, and these proceedings are an obvious sham.

But because you are an expert on tax policy, I do think it serves some purpose to shed some light and have you as the IRS commissioner understand some of the work of the IRS.

Is there anything that would prohibit someone from releasing their tax returns if they want to because they are under audit?

Mr. KOSKINEN. No.

Mr. NADLER. Thank you. Now, President Nixon disclosed his tax returns while under IRS audit. Have the rules changed since then?

Mr. KOSKINEN. No.

Mr. NADLER. Can an individual use other people's money, run through a charitable foundation, to enrich himself or satisfy his personal debts or obligations?

Mr. KOSKINEN. The rules are that would be personal inurement. No tax-exempt organization can benefit, use its funds to benefit any, in effect, insider.

Mr. NADLER. Would the following factors affect the tax exemption of a foundation: If an individual used funds from his charitable foundation to purchase a \$12,000 football helmet for himself signed by Tim Tebow, if an individual used \$20,000 from the foundation to pay for a 6-foot-tall portrait of himself, if an individual used \$100,000 of the foundation's money to cover part of a legal settlement after a dispute with a municipal government, or if he used \$158,000 to settle a dispute with a disgruntled participant at a celebrity golf tournament. Were any of those actions using tax-exempt foundation moneys improper, and if so, would they jeopardize the tax exemption of the foundation?

Mr. KOSKINEN. I can't comment on individual—

Mr. ISSA. Mr. Chairman.

Mr. NADLER. I would like him to answer the question, sir.

Mr. ISSA. Mr. Chairman, I object to the questioning, in that it is outside the scope of this hearing. Additionally, it is outside the scope and expertise of the witness.

Mr. NADLER. That is not a proper parliamentary inquiry.

Mr. GOODLATTE. The rules of the Committee would permit the gentleman to ask the question, and the commissioner is requested to answer.

Mr. KOSKINEN. Clearly, the general rules are understood that a 501(c)'s assets should not be used to benefit either a major contributor or anyone operating the entity. The particular facts and circumstances of any case would need to be reviewed carefully and—

Mr. NADLER. Obviously. But if those were the facts that I just said, would they be improper?

Mr. KOSKINEN. All I can tell you is that the rules are clear, and it would be up to a set of people who do this regularly at the IRS to investigate and make a determination as to whether, in fact, the tax exemption of that organization was still viable.

Mr. NADLER. Thank you.

Commissioner, in your opinion, if a fact pattern like this one were brought to the attention of the IRS and the IRS failed to investigate it, would that be a dereliction of duty or even an impeachable offense?

Mr. KOSKINEN. The commissioner does not make a determination as to—about any audit or investigation. We get referrals, suggestions, sometimes might review urgings to look into a wide range of activities of not only tax-exempt organizations, but others. Those are referred to a detailed process internally—

Mr. NADLER. Okay. Thank you.

Mr. KOSKINEN [continuing]. And it is not my role to make that determination.

Mr. NADLER. Thank you.

I have one last question, and that is, at the time you were appointed by the President, why did he ask you to take—to come out of retirement and appoint you to the head of the IRS? What mission—what did he state—what mission did he give you?

Mr. KOSKINEN. Actually, I did not talk to the President personally. I talked to Secretary Lew, who I knew from years ago, and White House personnel. And the reason I was asked was obvious: The IRS had made a terrible management mistake. I have spent 45 years of my career managing organizations under stress, including in the private sector and the public sector. And it was obvious to me just reading the paper that there was a problem that needed to be fixed, and I was honored to be asked and pleased to undertake the responsibility.

Mr. NADLER. Thank you very much. My time has expired.

Mr. GOODLATTE. The gentleman from Ohio, Mr. Chabot, is recognized for 5 minutes.

Mr. CHABOT. Thank you, Mr. Chairman.

You know, everybody is afraid the IRS, and no wonder. They can make your life a living hell if they want to. That is why it is so important that they play it straight, that they don't play favorites, that they don't play politics.

Well, back in the years leading up to Barack Obama's reelection in 2012, the IRS did play politics. It intensely scrutinized conservative organizations, especially if they had the words "tea" and "party" in their title, and all but refused to grant them tax-exempt status. At the same time, the IRS freely granted such status to liberal organizations.

Why would they do this? To give Barack Obama and his liberal allies the advantage in the upcoming election. And who ordered it? Well, Lois Lerner was the head of the exempt organizations unit of the IRS. She ordered it. But who above her told her to do it, and did it go all the way to the White House? We will never know, because she destroyed the evidence, then took the Fifth, and then the Obama Justice Department refused to prosecute her and find out the answers to these important questions.

In many ways, this is a lot like what Hillary Clinton did. She destroyed the evidence. Evidence of her emails was sought by the FBI and by congressional Committees. Rather than comply, she had her emails destroyed and she lied about it. She even had the devices that stored the emails, multiple BlackBerrys and iPads, destroyed,

some with a hammer. Yet the Obama administration Justice Department refused to prosecute her too.

So, Mr. Commissioner, where do you come in? Well, when the selective targeting of conservative groups by the IRS story broke, President Obama feigned outrage, said the targeting was inexcusable, and declared that we needed “new leadership that can help restore confidence going forward.” So President Obama brought you in to head the IRS, supposedly to clean up the mess.

Arguably, Commissioner Koskinen, you have made matters worse. How? Well, you testified before congressional Committees on multiple occasions, you made a number of important statements before Congress which turned out to be completely false, even though you were under oath. For example, in referring to Lois Lerner’s emails, you stated, “Since the start of this investigation, every email has been preserved, nothing has been lost, nothing has been destroyed.”

This turned out to be completely untrue, of course. Lerner had tens of thousands of emails destroyed. And when you learned of this, rather than inform Congress, you failed to notify Congress for 4 months.

Why in the world did you wait 4 months?

Mr. KOSKINEN. Actually, I waited 2 months. I was advised of this situation in April. And the reason I waited, because I instructed people we needed to find as many of the emails from that period of the hard drive crash as we could. We found and produced 24,000 Lois Lerner emails from the period of her hard drive crash.

She did not destroy the information. Thereafter, we produced another 50,000 emails. So the investigators, all six of them, had 78,000 Lois Lerner emails from the period of 2009 to 2013.

Mr. CHABOT. Well, I would submit that you had a duty to inform Congress immediately when you learned that. But let me move on, because I have only have a minute.

Mr. KOSKINEN. No, no. And I would agree. I have said that in retrospect, if I had it to do over again, in April, I would have contacted and advised Congress immediately. The delay didn’t change any investigation, but I can understand the aggravation it caused in some areas. And if I had to do it again, I would actually advise the Congress that the hard drive—I knew the hard drive had crashed and had been advised of that. We were now going to try, as we did, to produce all of the emails we could from that period, and we actually produced 24,000.

Mr. CHABOT. Thank you. Let me move on.

Similarly, after you learned of the destruction of Lois Lerner’s emails, you testified that the IRS went to great lengths to try to resurrect her emails by other means. This too turned out to be false. You and the IRS did very little to recover those destroyed emails.

In fact, experts testified that there were six ways the IRS could have tried to reacquire the emails. You failed to even try five of the six techniques. You failed to look at the IRS’ own backup tapes, you failed to look at the server, you failed to look at the backup server, you failed to look at the Lerner laptop, and you even failed to look at Lois Lerner’s BlackBerry. So you really did very little to comply with that.

My time is running out so let me just say this. What really makes me mad about this whole sorry episode is that the IRS subpoenas information from taxpayers all the time, and if the average taxpayer exercised the same lack of cooperation that the IRS displayed in this matter, that taxpayer would be in a world of trouble. That taxpayer would undoubtedly have been prosecuted, likely convicted, and likely would have spent time behind bars.

But in this case, it was the Obama administration's powerful IRS that got caught with its hand in the cookie jar. And you circled the wagons and clammed up and you took the Fifth and you destroyed evidence and betrayed the country, and most sadly, got away with it.

And my time has expired, so I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman, recognizes the gentlewoman from California, Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

I am really astonished by some of the reckless statements that have been made this morning. But let me just go to the commissioner.

You are under oath right now, right? You have to tell us the truth.

Mr. KOSKINEN. Yes.

Ms. LOFGREN. And we have had an IG report basically pointing out that when you testified before to a congressional Committee you told the truth as you knew it at the time, and later there was information that you didn't know that came out that you sent to us. Is that correct?

Mr. KOSKINEN. Correct.

Ms. LOFGREN. So I guess my question is, if you take a look at the Constitution, Article II, Section 4, it says,

"The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other High Crimes and Misdemeanors."

Now, I realize you are not here as an expert on constitutional law, but you are a lawyer and you went to a very fine law school. Can you tell me which element of that, treason, bribery, or other high crimes and misdemeanors, that you have committed?

Mr. KOSKINEN. My position and that of my lawyers is I have not committed any of those crimes. But, again, I recognize this Committee has already heard from constitutional experts, and it is this Committee's decision.

Ms. LOFGREN. No, I understand that. But I just think this is a trumped-up type of thing. Having worked on many impeachments in the past, this doesn't even pass the smell test. This is absurd.

I would like to also ask, since you are here, and we are not on the Financial Services Committee, is it within the authority of the commissioner to suspend an audit of a taxpayer during the course of a Presidential campaign so that that taxpayer who felt that they were constrained in the release of their audit would then feel okay to release it?

Mr. KOSKINEN. The IRS commissioner—

Ms. LOFGREN. Could you?

Mr. KOSKINEN [continuing]. IRS commissioner has no authority over any individual audit or even the determination of whether an audit should begin, and I think that is appropriate.

Ms. LOFGREN. Let me ask you whether or not—I know that everything that the IRS does is private and that the staff takes that very seriously, and I think we all appreciate that. But let me ask you this. If an audit had been terminated, would that—would the commissioner or the agency be allowed to say publicly that there was, in fact, no audit going on of a taxpayer?

Mr. KOSKINEN. We never would—do comment about any taxpayer situation, the status of whether they are under audit, whether the audit is continuing, or whether it is concluded. That is all taxpayer information that is protected.

Ms. LOFGREN. So even if there was nothing going on and somebody was lying about that, they would just get away with a lie?

Mr. KOSKINEN. We would never comment on any taxpayer's situation with regard to audits or filings or what was in that information.

Ms. LOFGREN. I would like to talk about whether or not, if someone took money from a foreign government, say, Russia, and then decided as a candidate or an elected official to go easy on our opponent, would that, if they were elected, an elected official, would that fall into the realm in the Constitution of bribery or treason?

Mr. KOSKINEN. I am not in a position to make a comment on that.

Ms. LOFGREN. Well, I just think that, you know, one of the things that should concern this Committee is the fact that one of our candidates for President has failed to provide transparency on his financial situation by releasing his tax returns, as every other candidate has this time and has for many, many decades. It leads to questions on the role that Russia is playing in his business, what that may lead him to do in terms of his extraordinary comments of praise for the Russian leader, who is a virtual dictator and certainly an adversary of the United States.

And I would hope that this Committee might use some time to explore that possibility and to see if we couldn't get that candidate to do the right thing and let the American people know that he has been compromised financially with Russia, the foreign power who is causing so much problems in the world, in the Balkans, in Syria, and certainly elsewhere around the world.

And with that, Mr. Chairman, I see my time has expired.

Mr. GOODLATTE. The time of the gentlewoman has expired.

The Chair recognizes the gentleman from California, Mr. Issa, for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman. And I will refrain from asking about large nonprofits that might have taken and been influenced by foreign government contributions. That would be too sensitive to Mrs. Clinton.

Commissioner, our Founding Fathers did consider maladministration for impeachment and they decided that that was too low. Do you know of that from your readings?

Mr. KOSKINEN. That is my understanding.

Mr. ISSA. And so I want to ask, very much along that, misdemeanors are in, maladministration is out.

Now, I represent Camp Pendleton and 47,000 marines. Maladministration is what you get fired for if you are a colonel, a captain, a sergeant, or even a general, and that includes loss of confidence in being able to do the job, failure to essentially get your subordinates to follow your orders, failure to show the kind of zealous obedience for compliance with rules, regulations, and laws.

These are two different standards, the standard between impeachment and the standard for relieving a senior officer or even a sergeant in the military. So I want to go through this, because I think, at a minimum, we should have a discussion about what actually occurred.

You were under a subpoena, you were aware that we were looking for documents, you assured the Oversight Committee that you were using absolutely every possible tool to recover them. And so now the question. In retrospect, did you fail to use every tool, did you fail to ask the kinds of questions of enough people, enough experts to know that the BlackBerry that still existed at the time of the investigation would have had many of these lost emails, that the servers, the tapes, and other documents could have been recovered, as you eventually discovered? Would you say that that is a failure of yours that you will have to live with?

Mr. KOSKINEN. No, we clearly failed. The BlackBerry was actually in the control of the IG from 2013 on. But as I have stated, we clearly failed in areas of preservation of documents, and I have said that was a mistake, and it was driven by the fact that we were spending, and I was told the group were looking every place they thought they would find the emails, and we found 1,300,000 pages of documents that were produced. It took us a year to do that. And that was where people thought the most likely place it was to come.

The IG in his review of everything else found another thousand emails, a number of which were in the early 2000's, long before this held, but those thousand emails, if we would have had the technique and the time, would have been important to produce.

But I would remind you that we did produce a phenomenal volume of stuff, with 250 people working every day. And from my standpoint, my commitment and order and instruction to people was to do everything possible to produce information for the Committee as fast as we could and as thoroughly as we could.

Mr. ISSA. Thank you.

I would ask unanimous consent that the 226-page report chronicling the actions be placed in the record from the Oversight Committee.

Mr. GOODLATTE. Without objection, they will be made a part of the record.\*

Mr. ISSA. Thank you.

Commissioner, you know, obviously if we had to do this over again, we would all ask that it be done differently. But I am going to use the remainder of my time to ask you a more serious question.

---

\*Note: The submitted material is not printed in this hearing record but is on file with the Committee, and can also be accessed at:

<http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=105349>

In light of the fact that agency heads generally make the decisions about subpoenas coming from Congress, and they lack, as you lack, in spite of all your experience, the expertise to know where to go, how to preserve documents, where the, if you will, all the places to make sure, the six different areas that could have been looked at and, according to the IG, were not looked at, five of them, do you think that Congress should insist on having a contact and responsible person in each agency that in fact could be held accountable because they had the expertise and could be reasonably expected to have the authority to enforce and deliver documents on behalf of lawfully submitted subpoenas?

Mr. KOSKINEN. That is an interesting suggestion that I don't have the authority to respond to, but it would be helpful to reaffirm the commitment that we had at the IRS, which is if Congress asks, not whether, subpoena or not, if Congress asks for information, we have an obligation to provide it as quickly as we can as thoroughly as we can. And that is an obligation, as I say, it doesn't take a subpoena, that is an obligation we have to the Congress any time you ask us for a question.

Mr. ISSA. In my last few seconds, Lois Lerner was referred for a criminal indictment by the Ways and Means Committee under a statute that said that the U.S. attorney for the District of Columbia shall present to a grand jury, and the Administration failed to do that.

In retrospect, when the American people expect somebody to be held accountable for the wrongful targeting of conservative groups, wouldn't it have gone a long way if the Justice Department had simply complied with the law rather than chose not to comply with the law?

Mr. KOSKINEN. I can't speak for the Justice Department, but I can, as you know, remind you that from the commissioner on down, the acting commissioner on down, all five levels of people responsible in this area are no longer with the government, they are no longer with the IRS. They, in fact, no longer have their jobs.

Mr. ISSA. Thank you, Mr. Chairman. I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman, and recognizes the gentlewoman from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Let me thank you very much, Commissioner, and let me apologize for your presence here today. I realize that you have made a commitment as a public servant, but I think it is appropriate to apologize to you for what I believe is a nonserious effort as relates to the Constitution and the impeachment criteria.

Saying that, let me take note of your language in your statement, which says, "I will do my best today to answer your questions and I am committed to full cooperation...That means listening and responding to feedback and criticism, acknowledging mistakes, and working diligently to improve." Do you still adhere to that statement in your testimony?

Mr. KOSKINEN. I do.

Ms. JACKSON LEE. So you are committed as a public servant to ensure that we get all the information that we need to have. Is that not correct?

Mr. KOSKINEN. That is correct. I spent 4 years on the Senate side as the chief of staff to a senator who ultimately chaired the Over-

sight Committee in the Senate, and I fully understand and appreciate and think it is appropriate for agencies to respond as quickly as they can with all of the information requested.

Ms. JACKSON LEE. Thank you, Commissioner, very much.

Let me put into the record a statement. The Senate Finance Committee, Department of Justice, and the Treasury Inspector General for Tax Administration found three points related to you, Commissioner, and that is that you had not misled Congress, you had not allowed evidence to be destroyed, at least it was not attributable to you, and you were not considered to have obstructed oversight of the IRS.

Do you still believe that those were true about your actions as a commissioner?

Mr. KOSKINEN. I do.

Ms. JACKSON LEE. Let me also put into the record a letter dated September 14 where a direct question was asked to the Treasury inspector general, no evidence was uncovered that any IRS employees have been directed to destroy or hide information from Congress, the DOJ, or the TIGTA. That letter was written by two Members of Congress on September 14, 2016. A letter came back from Mr. J. Russell George, inspector general, and it says, "I received your letter and its conclusion that no evidence was uncovered that any IRS employees have been directed to destroy or hide information from Congress, the DOJ, or TIGTA. In your letter, you specifically asked: Since issuing this report, has your office changed its previous conclusion on this matter? At this time, no additional information has been uncovered that changes our conclusion in this report."

I ask unanimous consent to put this in the record.

Commissioner, do you adhere to that letter from the inspector general?

Mr. GOODLATTE. Without objection, the document will be made a part of the record.

Ms. JACKSON LEE. You have seen such reports from the inspector general, have you not?

Mr. KOSKINEN. Yes.

Ms. JACKSON LEE. And do you adhere or at least understand that that is being said about IRS employees, which would include yourself?

Mr. KOSKINEN. Yes.

Ms. JACKSON LEE. Right. Do you—was Ms. Lerner at the IRS when you arrived?

Mr. KOSKINEN. She was gone. I have never actually met her or talked to her.

Ms. JACKSON LEE. Are you still engaging in "Be On The Lookout" activities?

Mr. KOSKINEN. We have not used "Be On The Lookout" activity numbers for 3 years or longer.

Ms. JACKSON LEE. I think it is also important to note, again, that this is not an impeachment hearing. And even though many of our Members are inquiring in that manner, it is not.

And it is also important to note that experts have said we have not given you due process. I hope as we proceed to eliminate this

proceeding, meaning to cease and desist, that if we do not, that you will have due process.

Let me proceed with some questions regarding the time that you have come after February 2014. What efforts have you made to be constructive and to provide information to Members of Congress?

Mr. KOSKINEN. Across the board, I have made a commitment that we will respond to every request. I will personally respond to every letter within 30 days, if at all possible, and I will explain if it is not. As a general matter, over 90 percent of inquiries get a response from me within 90 days. We have not refused to provide any information. We are anxious across the board. The IRS affects every taxpayer in the country, and it is important for us to be transparent.

Ms. JACKSON LEE. Thank you.

And in this proceeding, dealing with impeachment, if it is not high crimes or misdemeanor, there are elements that our friends believe that would suggest that you would be subjected to impeachment proceedings. And so is there anything that you have done that can show deliberate bad faith? You are a lawyer. You are allowed to say that you think this action or that action—is there any action that may have done so?

Mr. KOSKINEN. As I have said, we have—it was not a perfect process. There are things that, again, in retrospect—

Ms. JACKSON LEE. When you made mistakes, you owned up to it. Is that correct?

Mr. KOSKINEN. Yeah. And basically there is no evidence that I have actually acted in bad faith, given anybody instruction not to comply.

Ms. JACKSON LEE. And you offered information when you found the information after the fact?

Mr. KOSKINEN. And when we found the information. In fact, we spent a lot of time—again, I should have told Congress earlier, but we spent time finding the 24,000 emails.

Ms. JACKSON LEE. Let me ask you, this, Commissioner—I am sorry for talking over you. I am just trying to get in.

Is it appropriate for a foundation to give political donations out of the foundation, a 501(c)(3) foundation?

Mr. KOSKINEN. 501(c)(3) organizations, foundations, otherwise are not allowed to participate in politics.

Ms. JACKSON LEE. I thank you very much, Commissioner. And I believe an apology is owed to you. And I believe that there are no grounds, if we were to move in that direction, for any form of impeachment. We need to thank you for your service. Continue to do the good work that you are doing, working on behalf of the American people and answering questions from Congress in the normal oversight responsibilities.

Thank you. And I yield back.

Mr. GOODLATTE. The time of the gentlewoman has expired.

The Chair recognizes the gentleman from Virginia, Mr. Forbes, for 5 minutes.

Mr. FORBES. Mr. Chairman, thank you.

And, Mr. Commissioner, thank you for being here.

As we sit here today, just bringing a little commonsense to this, a vast majority of Americans believe today that our country is

headed in the wrong direction, and they want us, the people elected by them, just to fix it. And I want to go on record as saying I don't apologize for trying to fix it.

And when I look here and I recognize that a vast majority of Americans no longer trust their government, that creates a crisis of confidence in our government. And they have a good reason to believe that. And I don't apologize for asking how we fix that, when I see gag orders issued by the Pentagon where they don't even allow individuals over there to testify or meet with Members of Congress, we see evidence that is being destroyed, we see misrepresentation of facts to Congress. That is something we should come together and try to fix.

And so everybody has asked you what is appropriate, testimony from the other side. So I want to ask you this: What do you feel is appropriate as the IRS commissioner? Should you be held to a lower standard than the taxpayers subject to your jurisdiction, a higher standard, or the same standard? What do you think is appropriate for us to hold you to?

Mr. KOSKINEN. I think I, like any public servant, should be held to the highest standards of probity. We should cooperate with—

Mr. FORBES. Should you be held to at least an equal standard to taxpayers that are subject to your jurisdiction?

Mr. KOSKINEN. Yes, I think we should be held to that standard or even higher.

Mr. FORBES. And if that is the case, wouldn't you agree that if a taxpayer were sitting where you were sitting with the same responses that you are giving, that that taxpayer would be in a lot of trouble before the Internal Revenue Service?

And let me just throw this out to you: If the facts show that you lied to Congress and I am not saying they did; if they show that you lied to Congress or that you mismanaged your office, what do you believe is appropriate for Congress to do to try to fix it? You have already said you don't think that impeachment is the right thing. What do you think is appropriate? Should we just do nothing and let that continue, or should we just keep coming back in here and saying, oh, we are not going to do it again?

Mr. KOSKINEN. No. I have never objected to any of the hearings. I have had close to 40 hearings.

Mr. FORBES. I am not talking about the hearings. I am talking about the conclusions from the hearings.

Mr. KOSKINEN. Conclusions.

Mr. FORBES. You said that you didn't think impeachment was appropriate. Mr. Jordan said he didn't think you should continue to hold that office. If a taxpayer were here, you said you should be held to the same standards as that taxpayer.

Mr. KOSKINEN. Right. And if a taxpayer—

Mr. FORBES. That taxpayer would have had to pay the IRS.

Mr. KOSKINEN. If the taxpayer provided us information truthfully, did the best they could to produce information, and found that information was missing, the first thing we would do with that taxpayer is try to help them reconstruct those records.

Mr. FORBES. Wait a minute. Wait a minute. You are not going to tell me that if a taxpayer comes to you and has filed a faulty

tax return and then just says, oh, I am sorry, I didn't know that was the case, that you are going to let him off the hook?

Mr. KOSKINEN. No. He has got to pay the taxes he owes. The question is whether—

Mr. FORBES. What do you owe for misrepresenting something to Congress?

And let me just say this to you, Mr. Commissioner: What incentive is it when you come here to testify before us if you can consistently just say, I don't know? Isn't it a great incentive for you not to do due diligence, to find out? You could have told the Committee I don't know, but when you make an affirmative statement, doesn't that put you under some responsibility to have made sure you have ascertained that?

And the second thing, my friends on the other side of the aisle consistently love to say they didn't find any affirmative action that you did to order that information would be impeded from going to Congress. Don't you have an affirmative duty to do everything you can to make sure that doesn't take place?

Mr. KOSKINEN. And duty to make sure the agency functions well, that that doesn't take place to the extent I can control it.

Mr. FORBES. In hindsight, did you do everything you could do to find out if you were making accurate statements before Congress? And did you do everything you could do to make sure that evidence getting to Congress wasn't being impeded?

Mr. KOSKINEN. I do in retrospect. The erasure of those tapes was not known until well after my hearings and it is—

Mr. FORBES. That is not my question. My question is—

Mr. KOSKINEN. Well, the answer is, I couldn't tell the Committee things I didn't know. All I could tell the Committee in honesty and good faith was what I knew. And what I knew is what I told the Committee. When later information—a year later in terms of the tapes came out—I said that was a mistake and we should be—

Mr. FORBES. Did you do everything within your power to find that information? You said you were given assurances. Is that what you just relied on, that one person told you that?

Mr. KOSKINEN. I know I have—we have a large number of executives that I have great confidence in, and when they tell me that, in fact, they are doing their best to produce all of their relevant evidence—

Mr. FORBES. So you just can rely on those experts to tell you that, and that is enough for you?

I just close by saying, Mr. Chairman, the commissioner says he should be the same standard of the taxpayer. If a taxpayer was sitting there, Mr. Commissioner, I think you know, he would be in a world of hurt.

And with that, I yield back, Mr. Chair.

Mr. GOODLATTE. The Chair thanks the gentleman. Recognizes the gentleman from Tennessee, Mr. Cohen, for 5 minutes.

Mr. COHEN. Thank you, Mr. Chair.

And firstly, I welcome you. I know you would rather be other places, and I probably wish you were other places too. But you are here. And this has all the trappings of impeachment, and that is kind of a sexy thing, so to speak, in political parlance.

But the constitutional standard for impeachment that this Committee considers is high crimes or misdemeanors. And I know that has been discussed today. The question is not whether you, Commissioner, have been a perfect administrator—and I am not saying you haven't—that is a question for the Ways and Means Committee to decide—they oversee the IRS—and for the President who appointed you, not for this Committee.

The question we are called upon in this context is to decide whether it have been high crimes or misdemeanors that warrant the extraordinary constitutional remedy of impeachment. And that would be high crimes or misdemeanors that you have committed, not that maybe people think your office or your predecessors committed.

We heard in our last hearing that although high crimes and misdemeanors need not be limited to criminal acts, the commissioner's critics still need to show that he acted with the some deliberate bad faith. They have not done so, and every other investigator who has looked at these facts—the Treasury inspector general, the Department of Justice, the Senate Finance Committee—have reached the same conclusion.

So it is regretful that you are here. But since you are here, I want to ask you this: Has the Internal Revenue Service been funded adequately to perform its job of catching tax cheats, and by catching tax cheats and/or the threat thereof gotten the revenues that are necessary to provide the services that government should be rendering?

Mr. KOSKINEN. No.

Mr. COHEN. How much has the IRS budget been cut recently?

Mr. KOSKINEN. The IRS budget since 2010 has been cut \$900 million, even as we have 10 million more taxpayers and a wide range of statutory mandates to implement.

Mr. COHEN. Has been cut \$900 million, is that what you said?

Mr. KOSKINEN. Yes, our budget today is \$900 million less than it was 6 years ago.

Mr. COHEN. Has anybody taken that figure and said that when you cut the IRS \$900 million how much revenue is lost because of the lack of ability to audit—

Mr. KOSKINEN. We estimate and have provided that information to Congress that we are leaving \$5 billion a year on the table, and it is not a guess as to—we might find people. It is \$5 billion in audits that we can't undertake when we know there are difficulties.

Mr. COHEN. So we cut \$900 million. We haven't saved \$900 million. We have lost \$4.1 billion?

Mr. KOSKINEN. Correct.

Mr. COHEN. Does that contribute to the deficit?

Mr. KOSKINEN. Yes.

Mr. COHEN. And if you cut IRS by that much money—and you all are kind of the whipping boy of the—my friends on the other side of the aisle, who don't like or think the government services are so necessary—the government has to fund entitlements, quote/unquote.

So if you don't have the money and we lose \$4.1 billion, we are hurting the person at the bottom, the people that need government assistance. It is not an entitlement, whether it be SNAP payments,

or it is energy, LIHEAP, folks not getting through the winters without freezing, they are not getting enough food for their children, our public schools or maybe even public health, the CDC and the NIH which is looking for cures for cancer, and Alzheimer's, and diabetes, and heart disease, and stroke, and all the other diseases that are coming to get each and every one of us, one day.

Those folks are getting hurt. When they attack you, they are attacking the NIH, they are attacking the CDC, they are attacking people who need SNAP payments to ease hunger and their children and WIC payments and public education and public health. Is that not true?

Mr. KOSKINEN. Well, I am not an expert of where the money would go, but clearly there is less money to be provided or appropriated or to cut the deficit.

Mr. COHEN. Well, it is just incredulous to me. You have done nothing to warrant this hearing, but your office is under attack because government is under attack, and the government that is under attack is the government that takes care of the poorest and the least of these. Those that would be the most precious in the eyes of people who look at humanity as—at a sight of seeing how we treat others, and if we treat others as we should treat ourselves and follow the Golden Rule. And that is unfortunate.

And with that, I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman.

Recognizes the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

And, Commissioner, I thank you for coming here to testify. I think this is important discussion this country is having right now about our reliability within our government agencies.

And the first question from me would be, did Lois Lerner have any kind of a software package or any kind of electronic search that excluded or identified the conservative groups that far outweighed the nonconservative groups that had asked for the not-for-profit status?

Mr. KOSKINEN. Yes. Clearly, all of this started with the IG report noting that—he called it improper criteria. They were totally improper criteria were used to select organizations applying for (c)4 designation for further review. Those organizations predominantly were conservative organizations.

Mr. KING. Was there an electronic system that sorted out these applications?

Mr. KOSKINEN. No.

Mr. KING. Was there any database, any matrix of any kind, any paperwork of any kind other than a stack of applications?

Mr. KOSKINEN. No. My understanding is that there were ultimately developed "Be On The Lookout" lists for organizations with these names in their titles, and some of those were progressive names but the bulk of the applications were conservative. And it was that list, that "Be On The Lookout" list of any organization with these names in their title, had nothing to do with whatever their political philosophies or views were. It was if their name was in the title they should then be selected for review.

Mr. KING. And who generated that?

Mr. KOSKINEN. Pardon?

Mr. KING. Who generated that "Be On The Lookout" memo?

Mr. KOSKINEN. It actually was—I am not an expert in what happened before I got there, but my understanding was it was a back and forth by people at Lois Lerner's office as well as the frontline trying to figure out how do we handle these. And that list was developed and there was an attempt to stop using a list and then the list got used again.

Mr. KING. And we know that the IG confirmed the targeting that had taken place as well. I would ask you, have there been any firings, dismissals? Have you identified anyone within the IRS that had violated law or policy or protocol in such a way that it was worthy of termination?

Mr. KOSKINEN. As I noted, all of this happened well before I got there. That is why I am here. But as I stated, starting with the acting commissioner down, everyone in that chain of command is gone.

Mr. KING. Everybody in the chain of command is gone. Are there any remaining culprits within the IRS today?

Mr. KOSKINEN. None that anybody has pointed out that had a responsibility. The leadership and the responsibility are gone.

Mr. KING. And if you identified them, that would be your duty going forward as well?

Mr. KOSKINEN. Yes.

Mr. KING. And then I would like to take you to Martinsburg. I am having a little trouble understanding that. And that is, there were 424 tapes that were discovered at storage in Martinsburg in a shipping center that I view as a warehouse of about 1,900 square feet. I know about how big that is. And so that night shift, they decided they would scrub those tapes, 422 of the 424 successfully. And can you explain to this Committee how long it would take to process 422 tapes?

Mr. KOSKINEN. I don't know, but I assume it is a relatively prompt process. I would note, the tapes actually had been sent to Martinsburg. They originally were in New Carrollton and they were actually—a bulk of related tapes had been erased a couple years before that. These were the remaining tapes. They were in a closet. The IG said they were identified as junk and they were sent—

Mr. KING. Do they process them one tape at a time or multiple tapes in batches?

Mr. KOSKINEN. That I don't understand—I don't know, but I think they are one at a time but we will—we can find out.

Mr. KING. Well, I think that is important. Because how long would it take you to put a tape in, scrub it, even if it is a couple minutes to do so and another and another, and to get 422 of them done in an 8-hour night shift. Do you know the names of the individuals that processed those tapes?

Mr. KOSKINEN. I do.

Mr. KING. And they are still working for the IRS?

Mr. KOSKINEN. I can't talk about personnel, but the IG investigated them, clearly provided a report, and I can't say anything more about that.

Mr. KING. Yeah, but I am not asking you for their names. I am just saying, are they still working for the IRS?

Mr. KOSKINEN. My understanding is at least one of them is. But the IG noted it was an honest mistake, and we turned it over to our people to review it and that personal review—personnel review went on. But the IG said they had made an honest mistake. It was not anything intentional on their party. They certainly didn't mean to interfere with anything going on with the Congress.

Mr. KING. The IG, in their testimony before Congress, seemed to be a bit incredulous that this string of coincidences could be put together in that fashion and have the voids and the vacancies in information that we have.

I just reflect on this, Commissioner, is that if I would take the timeline of the IRS activities throughout this thing—and there are many of them sitting around in this Committee today—and I would overlay that over the timeline of the things that went on with Watergate, I will ask you, which one do you think would sound more improbable?

Mr. KOSKINEN. Again, that is a judgment, I guess, people could make. I think when there is a 17-minute gap and no intervening information provided, that is more significant than when there are tapes erased and 24,000 emails are provided from that same period. If we had some information about that conversations on the 17-minute gap, they would be more comparable. But there was no information there. It was all lost. Here, the IG said 24,000 emails but only 10,000 of them were from the gap period, and in that gap period we produced 24,000, twice as many emails from Lois Lerner.

Mr. KING. I would submit the opposite conclusion myself, but I thank you, Commissioner.

And I yield back, Mr. Chairman.

Mr. GOODLATTE. The time of the gentleman has expired.

The Chair recognizes the gentleman from Georgia, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

This hearing has been noticed as a "Hearing on Impeachment Articles Referred on John Koskinen, Part III." There are no impeachment articles, and this is not an impeachment hearing. This hearing is therefore simply a total sham. The impeachment process cannot begin until the 435 Members of the House of Representatives adopt a resolution authorizing the House Judiciary Committee to conduct an independent investigation. Such a resolution has not been presented to or passed by the House, rendering today's hearing a misnamed farce.

This Committee does a grave injustice to the Committee as a hollowed institution by being complicit in the perpetuation of this sham proceeding. There is a reason for a careful process when it comes to the most drastic action of impeachment; it is called due process. The effort to impeach IRS Commissioner John Koskinen is without precedent in the history of the United States.

The House has impeached Executive Branch officials only three times, and it has never impeached a sub cabinet official. The so-called impeachment resolutions contain clear errors of fact, misleading statements, and baseless conclusions.

The commissioner has repeatedly asked for immediate access to the transcripts of all interviews conduct by the House Oversight and Government Reform Committee during its investigation. They

are necessary to answer basic questions about the scope and depth of that Committee's investigation, such as what witnesses were interviewed, what questions were asked, what leads were followed, and whether all relevant information was disclosed.

But, again, I would tell you that this Committee has conducted no such investigation, the House Judiciary Committee. This is a drastic departure from our previous process, and it is depriving Commissioner Koskinen of his due process rights.

You know, there are many basic reasons for there to be due process applicable to this particular proceeding, with the errors that are—and the misleading statements and baseless conclusions that riddle the so-called charging document.

It is due process that requires Commissioner Koskinen to be allowed to make objections to any evidence, to cross-examine each witness that the resolution's proponents put forward, to call his own witnesses, to expose what he believes to be blatant factual errors in the resolution.

And then after due process allowed for the submission of the evidence against him and his ability to confront that evidence, present his own evidence, have that evidence subject to confrontation by the accuser, it then would fall to the reasoned and sober intellect of this Committee to determine whether or not impeachment was, in fact, warranted, which is a very drastic action, again, only taking place three times in the history of this country.

So what we are doing today, ladies and gentlemen, you know, I know, the American people know, it is just plain politics. We have got other things that we should be dealing with: The Zika virus, funding for it; funding for the Flint fiasco that has been un-remediated for the last year. So many things for this Congress to do: Passing a budget, keeping the government open. We are approaching another deadline, September 30. No continuing resolution, no omnibus, no appropriations bills passed, nothing. And here we are 3 or 4 days before we adjourn so that these Members, who talk so badly about the institution of government can go home to get reelected so they can come back next year and do nothing.

With that, I will yield back the balance of my time.

Mr. GOODLATTE. The Chair recognizes the gentleman from Arizona, Mr. Franks, for 5 minutes.

Mr. FRANKS. Well, thank you, Mr. Chairman.

Mr. Chairman, sometimes the track record of a particular witness to obfuscate is so strong that it vitiates the purpose of additional questions. And all that one can do is to state the facts and hope that they will be enough to serve the cause of justice.

Commissioner John Koskinen took over the Internal Revenue Service in the wake of the IRS conservative group targeting scandal, ostensibly, for the precise purpose of reforming that agency internally. Instead, he pointedly continued his predecessor's legacy of deliberately stonewalling justice.

After Lois Lerner, director of the IRS's tax-exempt organizations unit invoked the Fifth Amendment when she appeared before Congress, the Committee on Oversight and Government Reform issued a subpoena for IRS documents, including all of Lois Lerner's emails. The IRS's chief technology officer specifically issued a pres-

ervation order instructing employees not to destroy any emails, backup tapes, or anything relevant to the investigation.

But, Mr. Chairman, despite a congressional subpoena and a do-not-destroy order, the IRS inspector general found that the agency erased 422 backup tapes containing as many as 24,000 emails. And I know that has been stated here. But all the while, Commissioner Koskinen knowingly kept Congress in the dark.

Commissioner Koskinen was clearly aware that the emails had been lost, but he knowingly and deliberately withheld that information from Congress for 4 months and stonewalled the entire investigation. Mr. Koskinen testified under oath four different times before Congress during that 4-month period saying he would turn over all of Lerner's emails, making no mention of the fact that the bulk of them had already been "lost."

Mr. Koskinen provided false testimony and swore under oath that the information on the bulk of the backup tapes was unrecoverable. The inspector general found that approximately 700 of those emails had not, in fact, been erased and were, in fact, recoverable. Commissioner Koskinen then failed to protect citizens against the same type of future discrimination.

A General Accounting Office report found no significant measures had been implemented under Mr. Koskinen's watch to ensure that civil servants at the IRS don't continue in the future to unlawfully target Americans based on their political or religious views. Mr. Chairman, this entire matter was absolutely counter to everything a republic like ours was meant to be. In a constitutional republic like the United States of America, we are fundamentally predicated on the rule of law.

And there are very few things that more shamefully break faith with America and the American people or that undermine their trust in their government more than witnessing those given the sacred responsibility to enforce taxation equally and according to the law, using the Federal Government's power of taxation and its attending power to unlawfully and economically destroy.

For them to then deliberately oppress American citizens based on their religious or political views with these powers is an unconscionable act. And such a tyrannical abuse of power and the betrayal of their sworn oath to the United States constitution by Mr. Koskinen and Mr. Obama will be writ large in their legacy because it is something that goes to the very heart of the rule of law in this republic and that so many lying out in Arlington National Cemetery died to preserve.

Mr. Koskinen would never have allowed an American taxpayer to treat an IRS audit the way he and other IRS officials have treated this congressional investigation. The Congress owes it to the American people and future generations and to our sworn oath to the Constitution to hold the perpetrators of this tyrannical abuse of power accountable and to make sure it never happens again.

Mr. Chairman, with that, I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from Florida, Mr. Deutch, for 5 minutes.

Mr. DEUTCH. Thank you, Mr. Chairman.

Commissioner Koskinen, since you are the commissioner of the IRS, I have some tax questions for you. Since 1976, Commissioner,

every Democratic and Republican candidate for president—every one—has released his personal tax returns. And releasing tax returns provides voters with important background information of the candidate's contributions to his community, how he may operate his business.

And I just would like to confirm a few things that we might know if we had access to the candidate's tax returns. Releasing a tax return can demonstrate how much a person pays in taxes. Is that correct?

Mr. KOSKINEN. You would know anytime anybody files what they paid in taxes, yes.

Mr. DEUTCH. And would it also tell us how much a person gives to charity?

Mr. KOSKINEN. To the extent they took the charitable deduction, it would. For various reasons sometimes people don't.

Mr. DEUTCH. Would it give us some indication into a person's assets or investments?

Mr. KOSKINEN. All you report is income and expenses, so it would not necessarily tell you a lot about assets other than that they produced a lot of income.

Mr. DEUTCH. If they produced a lot of income, we could draw some conclusions about the amount of the assets?

Mr. KOSKINEN. Right. But there would be no way to actually know what the assets were.

Mr. DEUTCH. Yeah. And would it confirm how the person has chosen to try to reduce his tax liability?

Mr. KOSKINEN. Yeah. You would be able to see in any taxpayer's return what the deductions were, what benefits they took advantage of.

Mr. DEUTCH. Right. If we had the tax return, would it provide information on how a person receives his income? Right?

Mr. KOSKINEN. You would see the source of income, yes.

Mr. DEUTCH. Right. And we may, if we had the access to the tax returns, have some indication how the person finances his real estate transactions?

Mr. KOSKINEN. You would have some. You wouldn't have a full picture, again, because you wouldn't have a picture of all the assets.

Mr. DEUTCH. We would have some. Right, we would have some, as opposed to none.

And is it correct that a lot of this information we would be able to glean right from the first couple of pages a person's 1040 and schedule A?

Mr. KOSKINEN. You would have some, but it would be a very high level of abstraction because there would not be any of the exhibits.

Mr. DEUTCH. Right. But if—well, let me just—let me go on. As you are aware, the current Republican nominee for President, Donald Trump, has repeatedly said that he is unable to release his tax returns because he is under audit by the IRS. He said, "When the audit is complete, I will release my returns. I don't have a problem with it. It doesn't matter."

So I just have a few questions about that. Under current law, the IRS is prohibited from disclosing a person's tax returns, right?

Mr. KOSKINEN. Correct.

Mr. DEUTCH. But current law doesn't prevent a person from releasing his own tax returns?

Mr. KOSKINEN. That's correct.

Mr. DEUTCH. And how long can an audit go on?

Mr. KOSKINEN. Audits can go on, depending on the complexity, for years.

Mr. DEUTCH. And a person's not prohibited from releasing their tax returns while they are under audit, are they?

Mr. KOSKINEN. No. They may be advised not to, but they are not prohibited.

Mr. DEUTCH. Advised by the IRS not to?

Mr. KOSKINEN. No. They may be advised by their advisors, but not by the IRS.

Mr. DEUTCH. Okay. And, in fact, Richard Nixon released his tax returns while he was being audited by the IRS. Is there anything in the law that prohibits a person from releasing his tax returns during an audit?

Mr. KOSKINEN. No.

Mr. DEUTCH. Does the IRS—well, let me ask another question. Would releasing the person's tax return during the audit in any way impact that pending audit of the return?

Mr. KOSKINEN. The release itself wouldn't. The concern sometimes by taxpayers is that when the information is public, there may be more information that will be discovered or provided.

Mr. DEUTCH. Yes.

Mr. KOSKINEN. But to release itself does not—

Mr. DEUTCH. I understand. Right. That is the concern. I understand. We understand that that is the concern.

Does the IRS send a letter to a person informing him that he is being audited by the IRS?

Mr. KOSKINEN. Yes. In other words—in fact, as I tell people with the phone scams, if you are surprised to be hearing from us, you are not hearing from us. We send you a letter if we are going to start an audit.

Mr. DEUTCH. Commissioner Koskinen, is there any law or regulation that prevents a person from publicly disclosing the letter from the IRS that tells them that they are being audited?

Mr. KOSKINEN. There is no restriction by the IRS.

Mr. DEUTCH. Releasing tax returns, as we have just been discussing, provides transparency. It is being reported also on the front page of today's Washington Post that the Trump Foundation spent more than a quarter of a million dollars to settle lawsuits that were filed against his business. Just a few remaining questions there.

Is it illegal for the head of a nonprofit to use money from the charity to benefit himself or his business?

Mr. KOSKINEN. As a general matter, nonprofits are not allowed to—it is called inurement—use benefits of the tax-exempt organization for their own purposes.

Mr. DEUTCH. Okay. Is it also illegal for a nonprofit group to make political gifts such as the Trump Foundation's \$25,000 contribution to the Florida attorney general's reelection campaign?

Mr. KOSKINEN. I can't talk about any individual taxpayer's activities. The law is clear: 501(c)(3) organizations cannot be involved in politics.

Mr. DEUTCH. Right.

Mr. KOSKINEN. But I, again, would stress, we never talk about any individual's tax returns or their policies.

Mr. DEUTCH. Right. Commissioner Koskinen, we shouldn't have to ask you to talk about Donald Trump's tax returns. We should be free to talk about those tax returns, because as you have told us, there is simply no reason that he has not shared them with us; he has not been prohibited from sharing them with us; and, in fact, there is no rule that says that he can't at least provide the audit notice so that we can have some small piece of information that might help us.

You are right. We can't learn everything there is to learn about his finances from his tax return, but it sure would be an important start for the American people. And I appreciate your being here to help clear some of that up.

And I yield back the balance of my time.

Mr. GOODLATTE. The Chair recognizes the gentleman from Ohio, Mr. Jordan, for 5 minutes.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. Koskinen, is the IRS still targeting conservative groups?

Mr. KOSKINEN. Absolutely not.

Mr. JORDAN. Mr. Koskinen, that is not what the United States Court of Appeals for the District of Columbia said. They just issued a decision on August 5, 2016, last month. And I just want to read from that decision. They said, "Cessation has never occurred. The IRS has admitted to the inspector general, to the district court, and to this court that applications for exemption by some plaintiffs have never to this day been processed."

That sounds like it is still going on to me, Mr. Koskinen.

Mr. KOSKINEN. I——

Mr. JORDAN. I mean, let's read further.

Mr. KOSKINEN. Okay.

Mr. JORDAN. They say, It is absurd to suggest that the effect of the IRS's unlawful conduct, which delayed the processing of plaintiffs' applications, has been eradicated when two of the plaintiffs' applications remain pending. Sounds like targeting still going on to me.

Let me just paraphrase that. It is absurd to say targeting has stopped when the unlawful conduct continues. Again, this is not Jim Jordan saying this. This is not Donald Trump saying this. This is not the Freedom Caucus saying this. This is the United States Court of Appeals for the District of Columbia decided just 6 weeks ago.

So you guys are still up to it, aren't you?

Mr. KOSKINEN. No. As I wrote in a letter to all of the oversight Committees, including yours, there are three cases out of the 145 that have not been processed because they are in litigation. And our policy for years has been if you are in a process and then you sue us, we stop the process.

Mr. JORDAN. You know——

Mr. KOSKINEN. But those are three from 4 or 5 years ago. They are not new cases. There is no new case in the last 3 years.

Mr. JORDAN. Yeah. These guys have been waiting 4 or 5, some cases 6 years. And, you know, I figured you would say that, and so it doesn't carry much weight with me and it frankly didn't carry any weight with the court. Because here is what the court said to that very argument. They said, The IRS is telling applicants in these cases, "We have been violating your rights and not properly processing your applications. You are entitled to have your applications processed. But if you are ask for that processing by way of a lawsuit, then you can't have it."

So the court wasn't buying your argument. They don't care what your internal policy is. They are more concerned about people's fundamental liberties and you guys continue to violate them.

They go on to say this: "We would advise the IRS if you haven't ceased to violate the rights of the taxpayers, then there is no cessation." So if you are still doing it, if you haven't stopped doing it, then you are still doing it is what the court said. You can't sit there and say you are not still targeting. So here is what we have got to keep in mind.

Mr. KOSKINEN. Targeting is a present-tense verb. Those organizations were improperly selected 4 years ago.

Mr. JORDAN. These organizations still don't have their tax-exempt status.

Mr. KOSKINEN. And as I noted, once the court made that issue, while we for 50 years have stopped processing, we are processing those applications.

Mr. JORDAN. Remember, Mr. Koskinen, this is not me making the argument. This is not just all these—we have heard from the other side, these conservatives who want to impeach the IRS commissioner. This is the court saying you guys are still doing it. Never forget the underlying offense.

The IRS targeted people for exercising their most fundamental liberty, their right to speak against the policies of their government, and they got harassed for doing that. We have heard a lot about due process from the other side. I think you should get every bit of due process you are entitled to.

But how about the due process that all these people who got harassed for years and three groups are still getting harassed today? Here is what happened. The IRS targeted folks. They got caught. Ms. Lerner, at first, she lies about it. She says, oh, it wasn't us. It was those folks in Cincinnati. Then she takes the Fifth. That sort of puts a premium on all the documents and communications, making sure we get those. That is why we had two subpoenas and three preservation orders for that information.

You come in to clean up the mess, and under your watch, documents are destroyed, false statements are made, 422 backup tapes are erased. And now the clincher. Now the clincher: It is still going on. And so the other side can say that we shouldn't be here today. You shouldn't have to sit through this. I am saying, why didn't we do this a long time ago?

You should've been gone a long time ago, when this is the record: Losing emails, backup tapes destroyed, targeting still continues to this day, not Jim Jordan's words, not Freedom Caucus words,

words from the Court of Appeals. For goodness sake, that is why this hearing is important, and that is why we should move forward with the articles that Mr. Chaffetz submitted 15 months ago and make sure that you no longer hold office.

Mr. Chairman, I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman.

Recognizes the gentlewoman from California, Ms. Chu, for 5 minutes.

Ms. CHU. Thank you, Mr. Speaker, Mr. Chair.

Commissioner Koskinen, today, how many investigations have you been involved with regarding the events referenced in this impeachment resolution? Could you explain your personal involvement in each of these investigations?

Mr. KOSKINEN. Again, all of this happened before me. When I started, there were six investigations ongoing: The House Oversight Committee, the Ways and Means Committee, the Senate Finance Committee, the Senate Permanent Subcommittee on Investigations, the Department of Justice, and the Inspector General all had investigations going on.

Ms. CHU. What were the results of these investigations?

Mr. KOSKINEN. The IG noted in its investigation that no one had done anything purposely to impede the congressional investigations. Nobody had instructed anybody to do that. The Justice Department said, while there—and I would totally agree—mistakes made—it was not a perfect process by any means—no one had done anything that, in fact, raised to a level of any activity subject to, you know—they basically said nobody did anything that impeded the investigation.

The bipartisan report from the Senate Finance Committee, again, had all the information they needed, disagreed. There was a majority report and a minority report about whether it was political motivation or whether it, in fact, was just bad management and a poor management judgment. The bipartisan report had a series of recommendations. We accepted all of those recommendations. We actually accepted all the recommendations of the majority report and the minority report.

The Permanent Subcommittee on Investigations closed its report. It was the first one. And it basically maintained that there was nothing done that was intentional in terms of any material presentation. Everybody has agreed that it was a management mistake, a terrible mistake. It shouldn't happen again. No one should be selected for any adverse activities, either denial of an application or wait for time, simply because of the name of the organization.

This was not political philosophy. This was, in fact, selecting people only by the name of the organization. And everybody has agreed—and I totally agreed when I started—in fact, I apologize to anyone who was stuck in the process for more than a year waiting for an answer.

The Ways and Means Committee has not issued a report.

The House Oversight Committee did not issue a Committee report. There was a staff report issued at the end of 2014.

Ms. CHU. In fact, let's talk about the Treasury Inspector General. Could you describe what the working relationship is like between the staff at the IRS and the Treasury Inspector General. Are the

results of the investigation by them generally considered nonbiased and reliable?

Mr. KOSKINEN. Yes. For 3 years, when I was in OMB, I chaired the Intergovernmental Organization of Inspectors General. I have always been a supporter of the IGs. In the private sector, I was a supporter of internal auditors. I meet with the senior staff of the IG every month.

As I tell our employees, the IGs and GAO don't create problems; they raise issues before that we might not otherwise know, and it is important to respond positively. And we have responded to the IG's recommendation. The IG reviewed it and said, we had actually basically implemented all of their recommendations. They had some additional recommendations. We have implemented those as well.

But, I think the IG has done a good job. I knew him when he worked on the Hill for the Republicans, but I don't think he has been political. I think he has done a straightforward job, and we have a good relationship.

Ms. CHU. Uh-huh.

One major problem here stems from the decision of two IRS employees in a West Virginia facility to erase the backup tapes that contained some of the Lois Lerner emails. The inspector general found in its June 2015 report that no evidence was uncovered that any IRS employees had been directed to destroy or hide information from Congress, the DOJ, or the Treasury Inspector General.

Let me ask this: Did you make an affirmative order that those tapes be preserved? And did you ever make efforts to keep this information from Congress?

Mr. KOSKINEN. I know I never kept any information from the Congress. My counsel, in February 2014, within a few weeks of my arrival sent a reminder to the IT department making sure that they understood that all of the media should be preserved.

And again, as I said, when I discovered in 2015 from the IG that those tapes had been erased, I said that was a mistake. It shouldn't have happened. And as has been noted, I run the organization, and if an honest mistake is made on my watch, it is my mistake. I tell employees that.

Ms. CHU. So you made several statements saying that those tapes should be preserved then, your office did?

Mr. KOSKINEN. I did not make several. It had gone through the system. There was a standing order in 2013. There was a reminder that went out from my counsel to the IT department to preserve those reports. We were making a massive effort of production, so you would have thought everybody would have known that we are producing documents as fast as we could, and therefore, we should protect them.

Ms. CHU. Thank you. I yield back.

Mr. GOODLATTE. The Chair thanks the gentlewoman.

Recognizes the gentleman from Georgia, Mr. Collins, for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. Koskinen, thanks for being here. I think it is interesting that we have the commissioner of the IRS here to give tax advice. I am glad that you have worked with my office to actually help my con-

stituents actually be able to get tax advice, where we had one person with 700-plus thousand people having to take golden tickets at a front door at 3:30 in the morning.

I know we have added another one. I would like to see another added there. And we still have some ongoing correspondence that I would like some break down on the letters that I have shared with you.

Mr. KOSKINEN. And I am delighted to do that.

Mr. COLLINS. And we will continue.

However, let me go back to just a couple questions, because you and I have had several conversations. This thing has round over several years, and we have had conversations when I was a Member of the Oversight Committee.

And do you believe that a subpoena is a valid form of getting information from someone who is being asked for, like if the Committee actually subpoenas the Treasury or the IRS to produce documents, that is as a valid form of getting documents?

Mr. KOSKINEN. It certainly is.

Mr. COLLINS. And it should be followed. Correct?

Mr. KOSKINEN. Yes.

Mr. COLLINS. Okay. In September 2014, I asked you, this does not require a transcript. I am going to give you your answer back. I asked if the IRS had produced all the emails from Holly Paz as required by subpoena; this subpoena currently right here at the Oversight Committee. I had asked you the same question 56 days earlier, and the answer then was no. And then when I asked you the question September of 2014, the answer again was no.

My question to you today, have those documents been produced to the Oversight Committee?

Mr. KOSKINEN. I don't know. We have been working from the start with the Committee staff to prioritize. We had a long hearing, as you will recall, in March of 2014, about the order in which we would reply to the subpoena. I made it clear we were prepared to respond to the entire subpoena. That is how we ended up with the Committee saying their first priority would be all of the remaining Lois Lerner emails, and I said we would provide those.

Since then we have been working with the Committee and working our way through the subpoena in terms of whatever information they would want.

Mr. COLLINS. Okay. Well, in number two on this subpoena, just as a schedule—which was supposed to have been produced on August 16, 2013, a nice day. That was my birthday. It didn't get the gift of being produced. But on Holly Paz was number two on the list. And on the actual request.

My question is this: Holly Paz is not in a crash situation. Her hard drive was never in doubt. Why the delay here? Are you blaming the Committee?

Mr. KOSKINEN. No, no, no. The Committee has a vast subpoena they are asking for, some information from 90,000 IRS employees. And at that hearing in March of 2014, we agreed that we would get Lois Lerner emails and then we would respond to the Committee staff as we went forward.

Mr. COLLINS. But if—

Mr. KOSKINEN. And we have provided Holly Paz emails. I just can't tell you whether all of the ones from Holly Paz that have anything to do with this issue have been provided. The question is, have we provided other emails that she may have sent, and I don't know the answer to that.

Mr. COLLINS. Well, in just your opinion as commissioner, do you think that you are in compliance with this subpoena?

Mr. KOSKINEN. I think we are in compliance with that subpoena in terms of our discussions with the staff. We have not completed—as I say, one of those questions is emails from 90,000 employees outside, and I have explained in 2014 that that would take a long time, and in our discussions with the Committee staff we are not pursuing that.

Mr. COLLINS. And we have understood that, but some of these were specifically named. The four people specifically named were not these vast amounts out here.

Mr. KOSKINEN. Right.

Mr. COLLINS. Holly Paz has no constructive problem with a computer. It was a hard drive.

Mr. KOSKINEN. Exactly.

Mr. COLLINS. You could get it off of it. I know—and it sounds very upfront frankly, and I know this. You are a very good witness in that you parse your words very well. That is a compliment, but it's also the very frustrating part of this whole thing. It sounds very much like you are blaming Committee staff on their priorities here.

Mr. KOSKINEN. I—

Mr. COLLINS. I think at this point this is the frustration that we all have with this.

Mr. KOSKINEN. I don't mean to do that, and I apologize if there is any indication that I am trying to blame the staff. All I am saying is we have been working with the staff in terms of response to the subpoena. We provided all of the Holly Paz and all of everybody's emails regarding the determination. That is how the 2,300,000 pages came out. I have forgotten how many hundreds, thousands of emails there are.

To the extent that the Committee at any time feels that there is additional information that we haven't provided, we have been providing information we completed. We sent a note to everybody saying we are done with document production in January of 2015. If we haven't provided all of the Holly Paz other emails that have nothing to do really with this and the Committee staff would like those, we will do that.

Mr. COLLINS. As I said before then, I say again now, this is why the American people just do not understand the selective ability to, you know, work with a subpoena or not.

And with that, Mr. Chairman, I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman, and recognizes the gentleman from Illinois, Mr. Gutierrez, for 5 minutes.

Mr. GUTIERREZ. Thank you, Commissioner. I am sorry, I am going to finish up this Skittle. I really love Skittles, because, as you see, they come orange and yellow, red and purple, all the different colors. And they come all together in a bag together, right, all the

different colors and kind of like a rainbow. A lot of people on this side of the aisle, we like that.

And every now and then—sorry—I will get a bad Skittle. But I don't ban them all because I get one. Because most of the Skittles are pretty delicious. I like them. They might not be nutritious, but they are delicious. Just like we shouldn't ban all the little girls fleeing murder and rape and human bondage and torture. We shouldn't ban them all. Just like we wouldn't ban all the Skittles because there might be one bad Skittle. This is a Nation of freedom of religion, and yes, even freedom to pay your taxes to the United States.

Commissioner, I have a few extra bags of Skittles, and I am going to share them with you and your staff so that after this reckless and bitter hearing, you can get a small amount of sweet candy to improve the rest of your day.

Now, I have a question. Is it fair to say that you are an expert on tax law at this point?

Mr. KOSKINEN. I know I have never claimed I was an expert on tax law.

Mr. GUTIERREZ. Okay. I know you can't answer questions about specific tax returns—you have made that abundantly clear to my friend Mr. Deutch and others as we had the hearings. Even if those tax returns everybody in America would love to see them, you can't share them so we can't do a poll and send it to you commissioner and you can abide by the poll. There are laws. Or to answer specific questions about any individual's tax activity.

So I want to offer a hypothetical and see if we can't get your reaction. Let's say someone set up a charitable foundation. Let's say someone solicits millions of dollars for that foundation, and let's say that that individual who set up the foundation used the money from that foundation, which is tax exempt by you at the IRS. This is a tax-exempt tax foundation.

And he uses it to pay off debts incurred by his for-profit company. Tax-exempt charitable, use that money to pay off debts incurred. In fact, not only does he do that, he used it to pay off legal judgment against his for-profit company. That is the company I am making money from, and I am hopefully paying you taxes. And I am using the other money that I don't pay you taxes because it is tax exempt.

So let's say for the sake of argument the individual says he would pay someone \$1 million if they hit a hole-in-one during a tournament at his golf course, and after someone hit the hole-in-one the individual refused to pay. Then after a court rules that he has to pay—\$100,000 would be paid, mutually agreed by a charity, a part of that settlement, the individual takes the \$100,000 of other people's money—not his money—the court said you have to pay the money, individual, but he uses it from the foundation to pay that debt.

My question to you is, given that scenario, is that strictly speaking—what is the term—legal to do something like that? I just want to know, would that be legal for an individual to use money from a tax-exempt account, foundation, a charitable account, of other people's money to pay off legal obligations incurred by his for-profit enterprises?

And before you answer, let me just follow up, again, strictly hypothetical: Let's say there were a \$10,000 portrait of the individual and he used the foundation's money to buy it, put it in one of his for-profit businesses, writing a check out of the charity auction drawn and the charity using other people's charitable tax-free donation but using the portrait in his for-profit business.

So I get a bunch of money, I put it in my foundation, we don't pay taxes on it. I go and bid on a portrait of me and then I put it in my business. Would that, in your opinion, be legal within the law and consistent with someone who declares themselves a law-and-order individual?

Mr. KOSKINEN. Congressman, I said at the start I came here to answer questions truthfully and straightforward. But I can't—we don't talk about individual cases, and if hypotheticals begin to look like individual cases, I am not at liberty to give opinion or judgments about them.

Mr. GUTIERREZ. But, Commissioner, Commissioner, you do know whether something is legal or not. I mean, here is the question: Can someone take money from a not-for-profit foundation and pay off a legal settlement, court settlement to pay that debt off?

Mr. KOSKINEN. What I can say is—

Mr. GUTIERREZ. Is it—can you use tax-exempt money to pay for business purposes?

Mr. KOSKINEN. As I have said before, the law is clear: Any tax-exempt organization cannot use its money to benefit anyone as closely associated with that organization. But I can't give you—every case is different. Every case has background and information surrounding it and—

Mr. GUTIERREZ. Commissioner, you know who I am talking about. Everybody in this room knows who I am talking about, right. So all we want is a straight answer.

Mr. KOSKINEN. But I—

Mr. GUTIERREZ. Right? I mean, I know—can he get a haircut?

Mr. GOODLATTE. The time of the gentleman has expired.

Mr. GUTIERREZ. Can he buy a new car? Can he buy new suits? What can he use with that tax-exempt charitable money?

Mr. GOODLATTE. The time of the gentleman has expired. The commissioner will be allowed to answer the question if he chooses.

Mr. KOSKINEN. As I would stress, and I think it is important for all the taxpayers to understand, if you deal with us, your information we go at great lengths to protect. Our employees understand every taxpayer's information is sacrosanct. We do not reveal it to anybody.

And it is important for them to understand that we do not discuss anything about their tax situation with the public. And so while I understand the interest in this issue, even in the hypothetical sense, it would be inappropriate for the commissioner or anybody else at the IRS to respond other than to say the law is clear as to what 501(c)(3)s can do and cannot do.

Mr. GOODLATTE. The Chair recognizes the gentleman from South Carolina, Mr. Gowdy, for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman.

Commissioner, I want you and I to do something that those of us who serve in government probably ought to do with a little more

regularity, which is put ourselves in the shoes of the people that we purport to work for. I want you to imagine waking up and you learn that agents of an agency that you already fear, one of the most feared agencies in all of government, with a lot of control and power, either real or perceived, over your life, some agents of that agency are targeting people based on their political ideology. And those are folks in positions of leadership.

I don't know if you have read Lois Lerner's emails or not, but there is a palpable animus, a hostility toward conservatives that comes through in her work emails. These are work emails. This is not her musing about an op-ed in the Washington Post. These are work emails demonstrating a tremendous enmity toward conservatives. And some of those groups wanted to do nothing more than just educate their fellow citizens about the Constitution.

And so I am sure you can appreciate the irony of Lois Lerner punishing people who want to educate their fellow citizens about the Constitution and then she comes and hides behind it to avoid answering questions about her conduct. That is why people are upset.

And then you add to that the President of the United States, the person who campaigned as the great uniter, that the same rules should apply to everyone, really didn't mean it after all. And he prejudices an investigation while the investigation is pending. So against this backdrop, Congress—I am sure you will agree—has not only the right but, frankly, an obligation to provide oversight over an agency where that is the prima facie evidence at bar.

We have an obligation to do it. But the efficacy of our investigations depends upon the fullness of the information we are provided and the honesty of the witnesses that come before us. We are of no use if we have incomplete information or those that we seek information from are not truthful.

So there is a piece of your testimony that has troubled me, and I want us to go through it. And this is what you said: "Since the start of this investigation, every email has been preserved. Nothing has been lost. Nothing has been destroyed." So I want us to go through it. What did you mean by since the start of this investigation?

Mr. KOSKINEN. I meant since the response, as you note, the appropriate congressional response to the IG report in May of 2013 when the six investigations started. The investigations there, as I said, were four congressional, the IG and DOJ.

Mr. GOWDY. All right. So you and I are in agreement. You meant from the very inception of the investigation?

Mr. KOSKINEN. Correct.

Mr. GOWDY. And then your next—this is under oath—I think you will agree it is material. It is important. We are not asking you about something unrelated to the investigation. It is under oath. The next thing you say is, "Every email has been preserved." What did you mean by every email?

Mr. KOSKINEN. I meant by every email that the IRS had that I knew of had been preserved. That is what I thought. That was my honest belief.

Mr. GOWDY. Well, then why didn't you say that?

Mr. KOSKINEN. Pardon?

Mr. GOWDY. Why didn't you say that?

Mr. KOSKINEN. Well, if I knew then what I know now, I would have testified differently. But at the time I testified honestly on what I knew and what I had been told.

Mr. GOWDY. Well, then that gets us—

Mr. KOSKINEN. And nobody regrets more than I do that in some ways this case has been the case that keeps on giving with new information coming out. I wish the information had all been out to begin with.

Mr. GOWDY. Well, Commissioner, it is always an option to say, "I don't know." Loretta Lynch has made a living answering questions with, "I don't know." It is always an option to say, "Based on what I was told." But you were incredibly definitive. You said every email has been preserved. And then for those of us who may not have been paying attention, you said, nothing has been lost. What did you mean by "nothing"?

Mr. KOSKINEN. What I meant at that time was I had been advised nothing. But you are exactly right, in retrospect I would have been better advised to say, "to the best of my knowledge," or, "on the basis of what I have been told," which was, in fact, the basis of my testimony.

Mr. GOWDY. Well, I am out of time, but this is what I would like you to do, because this is an important matter. I was one of the folks who wanted this hearing. I think this is really important. And you should be able to provide us information, but Congress should have all of that information.

Mr. KOSKINEN. Exactly.

Mr. GOWDY. So what I would like for you to do for me, is you used the word "mistake." That is the lowest level of scienter. There is mistake, there is reckless disregard for the truth, there is deliberate indifference, and then there is intent. I would be curious what you think the proper punishment is for each level of that scienter.

And the other thing I need you to do is, to the extent you relied upon other people's counsel or what they told you, I need to know who they were. I think you would want us to interview every single witness that has access to information that would be relevant.

Mr. KOSKINEN. I think you have interviewed all of them already.

Mr. GOWDY. So you cannot think of a single person that this Committee should interview that we have not already interviewed?

Mr. KOSKINEN. To the best of my knowledge at this time, you have interviewed the—I don't know the names of all the 50, but the people who advised me throughout this case, you have interviewed.

Mr. GOWDY. Would you do me the courtesy of making sure with your lawyer that the record is complete, because whenever the record is complete, that is when we have to make the decision. And I am giving you the opportunity under the heading of due process to make sure that every bit of information you think should be considered is, in fact, in the hands of this Committee.

Mr. KOSKINEN. Well, I would just note, and without going into detail about it, there is a lot of information and misinformation and misinterpretation of it that is in the hands of the Committee, and if there were going to be a full hearing, I would have the opportunity to explore that, we would be able to cross-examine wit-

nesses, we would be able to actually provide you not just the allegations being made, but the facts on both sides. Each side would have the opportunity.

But the impact of the facts. You should hear from the inspector general directly, who did he talk to, is he still, as he said in his letter, confident that it was an honest mistake by two employees, it was not purposeful.

You should hear——

Mr. GOWDY. That is what I am asking.

Mr. KOSKINEN. Yeah.

Mr. GOWDY. Give me a witness list. Because you can't cross-examine them until we have examined them.

Mr. KOSKINEN. That is correct. I would be happy to provide you the witnesses and the information that this Committee would need to be able to actually proceed accordingly. But, as noted, that would be if the Committee decided it wanted to go to a full-scale impeachment process, which I understand this is not.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. GOODLATTE. The time of the gentleman has expired. I allowed additional time because that is a good exchange of what needs to happen.

The Chair recognizes the gentlewoman from California, Ms. Bass, for 5 minutes.

Ms. BASS. Thank you, Mr. Chair.

Mr. Commissioner, let me begin by joining in with my colleague on the other side of the aisle in thanking you and your staff for being of great assistance to my constituents in Los Angeles. I have had several members of the community that have had some difficult situations, and your staff has been very responsive.

Mr. KOSKINEN. Thank you.

Ms. BASS. I know when you took over the IRS, one of the reasons why you were asked to fulfill this assignment is because of your history of addressing organizations that were having big challenges. And I wanted to know if you could describe what specific challenges the IRS faced at the time you took over the organization.

Mr. KOSKINEN. When I took over the organization, first, we needed to make sure that the situation that led to the improper selection of people just by their names never happened again. And so we pursued, and as people have made recommendations over which we have control, we have adopted those.

We had a substantial challenge when I started with the underfunding of the agency, which still continues, in terms of implementing not only the normal tax seasons, but we had the Foreign Account Tax Compliance Act, we had the Affordable Care Act. Since then, we have had the ABLE Act, we have had the Health Coverage Tax Credit Act, we have had private debt collection requirements, all of which have been basically unfunded mandates that the IRS has had.

We are under constant attack by organized criminals around the world trying to get access to our information, so our cybersecurity issues and our antiquated IT systems are a major concern and a major attack for us.

Ms. BASS. So——

Mr. KOSKINEN. They are all—

Ms. BASS. Go ahead.

Mr. KOSKINEN. And the last thing is, we provide tax credits pursuant to statute, particularly with the earned income tax credit. And I have been concerned from the start that we need to do everything we can to get the level of improper payments down, make sure everybody eligible participates, but make sure that the right amounts go out, and it has been a very complicated challenge.

Ms. BASS. So with all of those challenges, it is my understanding that the IRS has spent about \$20 million and devoted over 160 hours—160,000 hours—to collect, review, and produce over 1.3 million pages of documents to Congress. With all of that effort, all of that time, and all of those pages, were these primarily related to the 501(c)(3), (4) issue?

Mr. KOSKINEN. These were all related to the six investigations.

Ms. BASS. And are those numbers accurate?

Mr. KOSKINEN. Pardon?

Ms. BASS. Are those numbers accurate in terms of the amount of money, time, and pages?

Mr. KOSKINEN. Yes, those are the numbers. Basically it is \$20 million, we have had 250 people at various times working either full-time or part-time, doing our best to respond as quickly as we could to congressional requests.

Ms. BASS. So how did all of that time and money assist the IRS in addressing the number of challenges that you laid out?

Mr. KOSKINEN. The best it was going to do, and I hoped it would do in some ways better than it has, would be to try to assure people that we understood the nature of the problem, which the IG had reported on 6 months before I started, and then we would have a basis for trying to solve that problem. And I think we have done—taken all the recommendations anybody has had, because I think it is critical, going back to the issue about confidence in the IRS and in the government, for people, as I said, to believe that they are going to get treated fairly.

We don't care whether they belong to one party or another, whether they go to church, they don't go to church, who they voted for, what their political beliefs are, they should be treated the same way as anyone else, and all of that background is not relevant to us at all.

Ms. BASS. You know, when the whole controversy was taking place, I found it interesting, the concern over conservative organizations, because I am very familiar with a number of liberal organizations that felt they received extra scrutiny beyond what was appropriate by the IRS.

One of the root problems here in general is the time it takes for the agency to process applications for tax-exempt status. And I know in recent years, especially after Citizens United, the agency was overwhelmed by applications for (c)(3) and (c)(4) status.

I wanted to know how you have addressed this problem and is there currently a backlog?

Mr. KOSKINEN. Presently, there is no backlog. For a (c)(4) application, it now takes an average of 83 days to go through. For (c)(3)s, where we had a backlog of 65,000 applications when I started, we have streamlined the process for small charity applications

and allowed them to get through in a matter of weeks rather than 9 to 12 months, and there is no backlog.

Our goal is for the complicated (c)(3)s, to get them out within 270 days, and we meet that. For (c)(4)s, most of them get handled very quickly under expedited processing, so there are no backlogs.

Ms. BASS. And are you still getting a flood of applications, and can you give an example of how things were streamlined?

Mr. KOSKINEN. At this point, you know, we get—we have about a million and a half Subchapter S—sorry, (c)

organizations, tax-exempt organizations. Seventy-five percent of them are (c)(3), only about 5 percent are (c)(4)s, and the majority of the (c)(4)s are garden clubs, Kiwanis clubs, local groups. But every year we get a couple thousand (c)(4) applications, and as I say, the average time for processing now is 83 days.

Ms. BASS. Thank you. My time is up.

Mr. GOODLATTE. The Chair thanks the gentlewoman and recognizes the gentleman from Utah, Mr. Chaffetz, for 5 minutes.

Mr. CHAFFETZ. Thank you, Mr. Chairman.

Mr. Koskinen, in your opening statement you said that you had instructed people in writing to preserve their records. Could you please provide this Committee and the Oversight and Government Reform Committee a copy of those emails?

Mr. KOSKINEN. A copy of the emails? Sure. We would be delighted. I think my statement said that we instructed those. I did not personally send an email.

Mr. CHAFFETZ. You didn't. Okay. We will go back and look at the record. If there are any emails asking people to preserve those documents, we would like see those, because we don't think we have them.

Mr. KOSKINEN. We would be happy to provide those.

Mr. CHAFFETZ. Do you stand by all of your previous congressional testimony?

Mr. KOSKINEN. Well, I have noted that if I knew then what I know now, I would have testified in a different way.

Mr. CHAFFETZ. What in your previous congressional testimony needs to be clarified or altered or updated?

Mr. KOSKINEN. Well, I tried to make that clear. Clearly, at the time I testified, I was advised that, in fact, all the evidence was being preserved pursuant to the orders that went out. Since then, it is been clear that obviously some tapes were erased, which was a mistake. I said that at the time. If I were testifying again, I would say—

Mr. CHAFFETZ. Part of the problem that we have is that you have never clarified your testimony. This is the first time we have ever heard you say "mistake." This is the first time that you said that you provided essentially false testimony. That is the way I read it.

When you said on June 20, 2014, "Since the start of this investigation, every email has been preserved, nothing has been lost, nothing has been destroyed." Was that a mistake or was it false?

Mr. KOSKINEN. That was an honest statement on the basis of what I knew. As Congressman Gowdy said, I would have been better advised if I had said, "on the basis of what I have been told and I understand."

Mr. CHAFFETZ. But you told us in a hearing on July 23, you told Mr. Jordan that you learned in April that these emails were missing.

Mr. KOSKINEN. You have to understand there are two sets of emails. The emails that I knew were missing in April of 2014 were from the Lois Lerner hard drive crash. No one knew until 2015 about the erasure of the tapes in Martinsburg. When I testified in June, our whole focus, because none of us, the Committee nor I, knew about the erasure—

Mr. CHAFFETZ. Why are you testifying that since the start of the investigation, nothing has been lost, nothing has been destroyed?

Mr. KOSKINEN. At the time I testified, that hearing was about the Lois Lerner hard drive crash, so it was clear Lois Lerner's hard drive had crashed.

Mr. CHAFFETZ. But you also testified a couple weeks later that you knew in April there was a problem. In fact, Kate Duvall, your senior person, knew in February. But you said you personally knew in April, and yet you came before Congress and you gave these definitive statements.

Mr. KOSKINEN. Well, if you look at the timing of it, you had the report from us on the entire production system and the Lois Lerner hard drive crash before I testified.

Mr. CHAFFETZ. But what you said was false. Was it true or false, what you said?

Mr. KOSKINEN. It was true as far as I knew. And when I testified—

Mr. CHAFFETZ. But in April, you said you knew in April that there were missing emails.

Mr. KOSKINEN. Yes. And I filed a report with the Congress.

Mr. CHAFFETZ. How can you simultaneously say that you know there are missing emails in April, and in June you say, since the start of this investigation every email has been preserved?

Mr. KOSKINEN. Because Lois Lerner's emails were lost in 2011, long before the investigation started, and that hearing was about the Lois Lerner hard drive crash.

Mr. CHAFFETZ. Let me ask you another quote. True or false. "We confirmed that the backup tapes from 2011 no longer existed, because they had been recycled pursuant to the IRS normal policy."

On July 23 you said, "Confirmed means that somebody went back and looked and made sure that, in fact, any backup tapes that had been existed have been recycled." Is that true or false?

Mr. KOSKINEN. That was true in my belief at the time. Congressman Gowdy's exactly right—

Mr. CHAFFETZ. Who went back and looked?

Mr. KOSKINEN. I was told that the IT department—

Mr. CHAFFETZ. Told by who?

Mr. KOSKINEN. I was told by people, and you have interviewed all of those people.

Mr. CHAFFETZ. Who are these people?

Mr. KOSKINEN. Who are those people?

Mr. CHAFFETZ. Yes.

Mr. KOSKINEN. It was the deputy chief information officer, whom you have interviewed, who said to me that they had looked and

they were confident that, in fact—I asked, is there any way to get tapes? And he said, they have all been recycled.

Mr. CHAFFETZ. But nobody went back and looked. In fact, Mr. Camus, who was the deputy there at the Treasury inspector general, said, “The best we can determine through this investigation, they simply didn’t look for those emails. So for the 1,000, over 1,000 emails that we found on the backup tapes, we found them because we looked for them.”

How is it that you spent \$20 million, 250 full-time people, and you never looked for them, according to the inspector general? And you testify that you went back, in fact, and confirmed. That is false.

Mr. KOSKINEN. That is what I was told at the time. That was my understanding at the time. As I have said, if I knew then what I know now——

Mr. CHAFFETZ. And when did you inform Congress that this is your view now? When did you tell Congress that you were wrong on this?

Mr. KOSKINEN. When the IG reported in 2015, I subsequently had a hearing with the Senate Finance Committee about this, and I publicly stated in response to the public issues that it was a mistake for those tapes to be erased, and I testified with the Finance Committee——

Mr. CHAFFETZ. You know it was a mistake, but they were erased after a duly issued subpoena. That is where we have a fundamental problem. You issue 66,000 summons and subpoenas each year. You know how to dish it out, but you don’t know how to take it. And so we issue a subpoena, we expect you to comply with it. And when you destroy documents that are under subpoena, somebody has got to be held accountable for that.

Mr. KOSKINEN. The IG——

Mr. CHAFFETZ. And that starts with you. You provided false testimony to this Committee, you have provided false testimony to the Oversight and Government Reform Committee, and you should be held accountable for that.

I have got about 30 minutes more of questions, Mr. Chairman, but I will yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from Louisiana, Mr. Richmond, for 5 minutes.

Mr. RICHMOND. I will just, Mr. Chairman, I will just kick off where my good friend from Utah left off, and that is conversations about being held accountable.

You don’t know me, but I did criminal defense for a while, and I was a State rep, and in Louisiana I watched many people get indicted and go to jail for the misuse of nonprofit funds. And in your testimony, you say that one of the important things with the IRS is for people to feel that they will be treated fairly and that it doesn’t make any difference who they are, what organizations or what political party they belong to.

Well, let me just tell you, there are a bunch of people, including me, that think that the justice system is rigged for those who are privileged and those who are rich. So for the people that I have seen go to jail for misappropriating \$2,000, \$3,000, \$5,000, \$8,000, and we have an indictment that is pending right now, the question

becomes, how can someone take money that belongs to a nonprofit to satisfy a personal judgment and that not be a misappropriation of the nonprofit's funds?

Mr. KOSKINEN. I don't know the details. All I can say, as I have said, the law is clear, a (c) organization cannot use its assets to benefit anyone who is closely associated with the organization.

Mr. RICHMOND. And to pay off a personal judgment would be a benefit to a person, not an organization?

Mr. KOSKINEN. Whatever you use to not pursue charitable purposes, but to benefit anyone associated with it, the law says you should not—it is not allowed.

Mr. RICHMOND. Let me just say this, and I wasn't even going to bring that up, because I think today is a very unfortunate day, but it signals what this Congress has been about and why our approval rating is so low and why our reputation is the do nothing Congress. We do do something. We grandstand and showboat on a regular basis.

This Judiciary Committee in this room weeks ago, after Philando Castile and Alton Sterling were killed by law enforcement, I begged for a public hearing on the issue, because I really think that the public deserves it, and I think if we don't do it, we are going to have blood on our hands.

Well, unfortunately, police officers were killed. This week we have two more incidents where two people were killed in an incident with law enforcement, or two people lost their lives in an incident with law enforcement. But we are not talking about it. We are talking about a fragile country, we are talking about fragile people, and we are ignoring a humongous issue, because we are talking about impeaching you.

In Louisiana, we just had 7 trillion gallons of water dumped on Baton Rouge and the surrounding areas. Just in Baton Rouge, we lost 60 sheriff deputy cars, we lost 50 police cars, we have a law enforcement that is dismantled.

But we are not having a hearing here today to talk about how we get them back up because there is a pending Alton Sterling decision that has to come out and how do we protect American citizens and how do we keep their communities safe when that decision comes out, because we know it is coming, but we are, again, talking about impeaching you with 50 something, I don't know, 100 days left in our term.

We keep grandstanding while America is burning. There are some who would rather talk about Colin Kaepernick not standing for the national anthem than to talk about people losing their lives by the hands of law enforcement.

This is the Judiciary Committee. We don't even acknowledge—we are not even talking about the fact that we are losing law enforcement officers. We don't even have enough bulletproof vests for the sheriffs in the United States of America. But we are talking about impeaching you. We just had police officers and sheriffs gunned down in Dallas and in Baton Rouge, but they don't have police vests, and we are talking about impeaching you.

Somewhere, somehow you have to say, what are these guys thinking, what are these guys and women doing? Do they not realize that we have a crisis in America, and we are talking about im-

peaching you, which, you know, is laughable at its best if it wasn't so sad, that all of a sudden this becomes the biggest priority that we have.

And, Mr. Chairman, I would just again urge, and I want to be on the record every time we talk, that we need a public hearing so that people understand how serious we are taking the policing in America issue, because, again, if people don't understand we are taking it serious, they will continue to take it in their own hands, people that are mentally disturbed will do unimaginable things, and it is all on us if we don't get together and talk about it.

With that, I will yield back.

Mr. GOODLATTE. The Chair thanks the gentleman, recognizes the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Oh, for what purpose does the gentleman from Utah seek recognition?

Mr. CHAFFETZ. I would just ask unanimous consent to enter into the record the GAO report from July 2015, "Internal Controls for Exempt Organization Selection Should Be Strengthened." Critical that, as Mr. Jordan talked about, that the IRS has not fixed the targeting problem.

Mr. GOODLATTE. Without objection, it will be made a part of the record.\*\*

Mr. GOODLATTE. And now Mr. Gohmert is recognized.

Mr. GOHMERT. I appreciate my friend from Louisiana pointing out the grandstanding. That is kind of what I felt about the sit-in that occurred on the House floor and my friends across the aisle refusing to recognize that radical Islam is at war with us, and instead they talked about guns. I am looking forward to the grandstanding about pressure cookers and the need to make them illegal.

But this hearing is about whether or not, Mr. Koskinen, you committed such acts as should cause you to be removed from office. And it has already been mentioned that you had testified that you were made aware of problems associated with Ms. Lerner's emails the same month that Ms. Duvall discovered the gap and that you had withheld that information, didn't disclose it for 4 months, until June 13 of 2014, and that during that time, you had testified before Congress four times.

So I want to ask you, during those four times you testified after you learned about the problems with Ms. Lerner's emails, did it cross your mind at all that perhaps you should disclose that, that there were problems with Ms. Lerner's emails?

Mr. KOSKINEN. If I could correct the record. I have testified, and honestly, I learned about the Lois Lerner email crash in April. Between April and the time we provided the report to the Congress, I did not have a hearing. The hearings in June were about the Lois Lerner hard drive crash. But I have also stated, and the reason I did not immediately report that crash was because I instructed people to see how many emails from the crash period we could recover, and we recovered 24,000.

---

\*\*Note: The submitted material is not printed in this hearing record but is on file with the Committee, and can also be accessed at:

<http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=105349>

But as I have said, in retrospect, because it did create a certain amount of aggravation on the part that I understand of at least some Congressmen, in April, when I was advised, if I had to do it again, I would advise the Congress that we had a hard drive crash and we were now——

Mr. GOHMERT. So is it your opinion that once you have testified before Congress, if you learn information that makes your prior statements not completely true, that you have no obligation to come forward, send a letter, send an email, send a message that you have now learned things, or in your opinion, should you just wait until you are asked, and if you are not ever asked, you have no need to disclose? Which is your opinion?

Mr. KOSKINEN. I didn't wait until I was asked. We actually produced a full report to all of the investigative Committees about the process. But as I have said, when I learned of it in April, life would have been a lot easier if I had simply advised the Congress.

Mr. GOHMERT. Well, you——

Mr. KOSKINEN. But since that time, we have advised the Congress——

Mr. GOHMERT. When you found out there were problems—did you know Lois Lerner used a BlackBerry, that she had a handheld device?

Mr. KOSKINEN. I did not, but that BlackBerry was in the hand of the IG from 2013.

Mr. GOHMERT. Did it cross your mind that she may have had a portable device that was used to send and receive email?

Mr. KOSKINEN. No. I was not analyzing Lois Lerner's activities. I was working and instructing people——

Mr. GOHMERT. You knew there were requests for Lois Lerner's emails and it never crossed your mind she might have them on a personal device that she carried? That never crossed your mind? Did it cross your mind that there was this facility in Martinsburg, West Virginia, where storage was kept? Did that cross your mind?

Mr. KOSKINEN. No. I was focused, as the agency was, on reviewing all the emails we could, get emails. We had to pull each hard drive out of the computer and——

Mr. GOHMERT. Mr. Koskinen, when you are asked under oath about the existence of emails, there really is an obligation to learn about the emails and where they are and where they exist.

Let me just read for you—I hope you are familiar with the Internal Revenue Manual. You are, hopefully?

Mr. KOSKINEN. Yes.

Mr. GOHMERT. Thank you. Well, this was added January 23, 2014, 25.1.1.2. "Fraud is deception by misrepresentation of material facts or silence when good faith requires expression."

And I would submit to you, Mr. Koskinen, you have had ample opportunities over the last 2 years to disclose things or maybe to make inquiry, but it certainly appears you have what might be called willful ignorance so you don't have to come up here and testify about what actually happened.

It is hard to believe that you never made any inquiry about potential places that Ms. Lerner's controversial emails that may have been lost, may not have been lost, where they might be found. It shocks my conscience that the head of the IRS would not think to

ask any questions other than, can anybody find her emails? You require so much more from taxpayers.

And then we give you 290 million more dollars, and what happens? You start closing local tax assistance offices for taxpayers, like in Longview, Texas, and the excuse is, well, we got our budget cut. Yeah. This year you got \$290 million more; 2 months later you are closing offices to hurt taxpayers. It looks like there is a problem with the management at the IRS.

And I see my time has expired, so I yield back.

Mr. GOODLATTE. The time of the gentleman has expired. The Chair recognizes the gentleman from New York, Mr. Jeffries, for 5 minutes.

Mr. JEFFRIES. Mr. Commissioner, thank you for your presence and for your service.

The chief sponsor of the impeachment resolution that resulted in this hearing is Republican Representative John Fleming from Louisiana. Is that correct?

Mr. KOSKINEN. It is my understanding he is one of the proposers.

Mr. JEFFRIES. And Congressman Fleming is currently a candidate for the United States Senate. Is that right?

Mr. KOSKINEN. My understanding. I am learning from Congressman Gowdy.

Mr. RICHMOND. Yes, he is.

Mr. JEFFRIES. Are you aware that Congressman Fleming is currently running television advertisements as part of this campaign that claims that the head of the IRS—that would be you—ordered 24,000 emails erased?

Mr. KOSKINEN. I am aware of that.

Mr. JEFFRIES. But the facts have already been established, I think, that the emails were inadvertently wiped by two low-level employees. Is that right?

Mr. KOSKINEN. That is correct.

Mr. JEFFRIES. And these employees work the midnight shift. Is that correct?

Mr. KOSKINEN. Yes.

Mr. JEFFRIES. And they work the midnight shift at a facility in the blooming metropolis known as Martinsburg, West Virginia. Is that right?

Mr. KOSKINEN. That is correct.

Mr. JEFFRIES. Now, the Treasury inspector general is a Republican. Is that right?

Mr. KOSKINEN. Yes.

Mr. JEFFRIES. And he issued a report on June 30, 2015, which concluded “that no evidence was uncovered that any IRS employees had been directed to destroy or hide information.” Is that correct?

Mr. KOSKINEN. That is correct.

Mr. JEFFRIES. The Republican-led Senate Finance Committee has uncovered no such evidence, true?

Mr. KOSKINEN. That is correct.

Mr. JEFFRIES. The Department of Justice conducted an independent investigation and also concluded that no IRS employee, from top to bottom, had been directed to destroy or hide information. Is that correct?

Mr. KOSKINEN. That is correct.

Mr. JEFFRIES. This is not a legitimate impeachment hearing. This is a political charade, it is a sham, it is a Hollywood-style production. The outcome has already been predetermined, the script has already been written, the witness has already been labeled a bad guy, because in any Hollywood-style production, there must be a villain, and who better than the commissioner of the IRS.

But here is the problem. The Founding Fathers of this Nation gave to this House the power of impeachment as an extraordinary remedy only to be used in serious circumstances. It is not a high crime or misdemeanor to be the head of an agency that some of my friends on the other side of the aisle don't like as part of an Administration that some of my friends on the other side of the aisle don't like.

But it has been clear to me, as my good friend from Louisiana indicated, Rome is burning right now in the midst of a police violence crisis, but we are on this reckless legislative joyride to impeach the commissioner of the IRS.

Why is that? Well, perhaps there are some in this town who have been determined to impeach a member of the Obama administration from the day that the President of the United States was sworn in, in January of 2009, but you couldn't impeach Barack Obama, you couldn't impeach Eric Holder, you couldn't impeach Hillary Clinton, and so some genius came up with the brilliant idea that we are going to go after the IRS commissioner.

It is a dereliction of duty, it is the only reason why we are here today, and it is a waste of the time and the treasure of the American people.

I yield back.

Mr. GOODLATTE. The Chair recognizes the gentleman from Idaho, Mr. Labrador, for 5 minutes.

Mr. LABRADOR. Thank you, Mr. Chairman.

Thank you, Mr. Koskinen, for being here.

Your testimony suggests and what was just indicated by my friend suggests that impeachment is improper, and that you have attached many exhibits to that effect. You further stated that you are unaware of anyone on your level having been impeached in the past.

In fact, you sent us a letter from a bunch of college professors, law professors, that says, the reason for the salutary exercise of self-restraint by the House, meaning that we have never impeached anybody at your level, is that in our constitutional system, primary responsibility for supervising executive branch officials resides with the President, not with the Congress.

But the question that we have to answer in this hearing is, what happens when the President is not exercising that supervision over somebody like you?

So maybe the question is not whether impeachment is proper, but maybe the question is, why, after all of these disturbing instances of lack of candor, lack of transparency, and lack of fitness to serve, you still believe that you can competently serve as the commissioner of this agency?

This country may not have a long history of impeachment at your level, but certainly we have a long, long history of officials at

your level who have been subject to dismissal and resignation for similar or even lesser offenses than what you have perpetrated.

Are you familiar with Michael Brown, the former director of FEMA?

Mr. KOSKINEN. I do not know him, but I know the position he held.

Mr. LABRADOR. And do you know what happened to him following his mismanagement of the Katrina efforts?

Mr. KOSKINEN. I do not recall specifically. I know ultimately he left the government, but I don't know the circumstances.

Mr. LABRADOR. Yeah, he resigned from office.

Are you familiar with former DEA Administrator Michelle Leonhart? Do you know what happened to her following the release of a watchdog report on agent misbehavior under her watch?

Mr. KOSKINEN. I do not.

Mr. LABRADOR. She resigned from office.

Are you aware of what Katherine Archuleta, the former OPM director, did following the 2015 OPM hacks by foreign governments?

Mr. KOSKINEN. That, I do understand.

Mr. LABRADOR. And what did she do?

Mr. KOSKINEN. She resigned.

Mr. LABRADOR. She resigned. There are many examples of this, including the resignation of Secret Service Director Julia Pierson following security breaches and ATF head Kenneth Melson over Fast and Furious.

While I could, I am not going to spend my entire 5 minutes providing you with examples of agency heads at your level who have resigned based on agency failures. But, however, I am going to suggest to you why this is not a dereliction of duty. Your boss has refused to actually hold you accountable for your actions, so there is only one branch that can do that, and that is our branch.

Instead, I want to ask you, do you dispute that over 24,000 emails responsive to a congressional subpoena and investigation were destroyed during your tenure?

Mr. KOSKINEN. I do not.

Mr. LABRADOR. Do you dispute that you testified before the Oversight and Government Reform Committee after that destruction that it was your intention to comply with the request for evidence and that you were planning on turning over all relevant email communication?

Mr. KOSKINEN. That testimony was not after anyone knew about that erasure.

Mr. LABRADOR. But you testified that after that happened.

Mr. KOSKINEN. No. I—

Mr. LABRADOR. Was anyone at—

Mr. KOSKINEN. Yeah. I am sorry. I did testify after it happened, just nobody knew it had happened.

Mr. LABRADOR. Was anyone at the IRS, including the two low-level employees that you keep blaming for this, was anybody fired due to the destruction of evidence?

Mr. KOSKINEN. I would like the record clear, I don't blame them. At the time, I didn't blame them. The IG did a year investigation and found it was a mistake.

Mr. LABRADOR. Were they fired?

Mr. KOSKINEN. They were not—

Mr. LABRADOR. Was anybody fired for the destruction of evidence?

Mr. KOSKINEN. Those two people were not fired. The IG determined it was an honest mistake on their part.

Mr. LABRADOR. So no substantive corrective action has been taken. So ultimately, sir, I will do what you asked us to do. I will judge you on your overall record. Your inability to successfully preserve the information requested and your so-called mistaken testimony clearly demonstrates that your overall record is one of gross incompetence and extreme negligence, and that your department exhibited such, or worse yet, there was some intentional deception.

We shouldn't need the articles of impeachment that we are talking about today and we shouldn't need these hearings, because you, Mr. Koskinen, should have resigned for your failures to properly carry out your duties and for failure to bring the transparency that you promised during your confirmation hearings.

And with that, I yield back my time.

Mr. GOODLATTE. The time of the gentleman has expired. The witness will be permitted to respond if he chooses to.

Mr. KOSKINEN. Pardon?

Mr. GOODLATTE. You can respond.

Mr. KOSKINEN. No, I think if—I have an overall record at the IRS that I am proud. We have made significant progress across the board. I have talked about—

Mr. GOODLATTE. You have to respond to the specific—

Mr. KOSKINEN. But on the specific issue, I do not think that the mistakes, honest mistakes made by two employees are the grounds for either resignation or certainly not for impeachment. If, in fact, every time an employee makes an honest mistake in an agency, the expectation is that the head of that agency should resign, we are not going to have many agency heads around.

Mr. GOODLATTE. The Chair recognizes the gentleman from Rhode Island, Mr. Cicilline, for 5 minutes.

Mr. CICILLINE. Thank you, Mr. Chairman.

Thank you, Commissioner, for being here today and for your service.

There is clearly no evidence that the charges being leveled at you today have any validity whatsoever. In fact, multiple independent and bipartisan investigations have found that you in no way purposely misled Congress in any of your statements.

The Treasury inspector general, the Senate Finance Committee, and the Department of Justice have each conducted their own investigations on the so-called IRS targeting scandal, and while these investigations uncovered various management problems at the IRS, there was no evidence to support allegations of criminal activity or politically motivated behavior. There was no evidence to support allegations that you deliberately misled Congress or attempted to obstruct a congressional investigation.

In fact, each of these investigations found no evidence whatsoever that you acted in bad faith. Under your direction, the IRS has spent \$20 million and devoted more than 160,000 hours to collect, review, and produce 1.3 million pages of documents to investigating Committees.

The entire record, built on multiple investigations, fails to support the allegations leveled here today. And it is regrettable that rather than dealing with the issues of criminal justice reform, immigration reform, commonsense proposals to reduce gun violence, that we are taking up time in this Committee for this charade.

So I want to ask you, since you are here, about the political contributions of charitable foundations. First, is it legal or illegal for a charitable foundation to make a political contribution?

Mr. KOSKINEN. The law is clear, any (c)(3) or—any (c)(3) organization cannot make a political contribution. 527s can be in business, have to be in business totally to make political contributions. (C)(4)s, the rule is, as long as their primary purpose is social welfare, they can make political contributions.

Mr. CICILLINE. So if a charitable foundation makes a political contribution and the IRS becomes aware of it, you go through a process in which you impose a penalty, correct?

Mr. KOSKINEN. We would go through a process of doing an audit and an investigation to determine the details.

Mr. CICILLINE. And if you determine that such a political contribution was made in violation of law, you impose a penalty?

Mr. KOSKINEN. There would be penalties if that was the final determination.

Mr. CICILLINE. And in deciding the level of punishment, the kind of penalty that the IRS will impose, you look at whether, for example, it is an honest mistake or whether someone did it intentionally and then tried to cover it up. You would treat those two categories differently.

Mr. KOSKINEN. We certainly would. We would always in any audit hear from the taxpayer and make our responses accordingly.

Mr. CICILLINE. So in the case of a contribution made by the Trump Foundation of \$25,000 in which they made that contribution to a political action committee for the benefit of the attorney general candidate Pam Bondi, shortly before she decided not to pursue a criminal charge or any other investigation against the Trump Foundation, on the filing of the foundation, they put as a place that they made a \$25,000 contribution instead an organization called Justice for All, which is a Wichita organization, which they never made a contribution to, which sounds just like And Justice for All, the only inference, I think, would be in an effort to cover up an illegal political contribution.

In those circumstances, the IRS would impose a more severe penalty, correct?

Mr. KOSKINEN. I don't mean to be unresponsive. As I say, my goal here today is to answer questions. But as I say, when hypotheticals start to get very specific, it is inappropriate for the IRS or the commissioner to respond.

Mr. CICILLINE. Well, Commissioner, you have been undoubtedly following the extraordinary coverage of the operation of the Trump Foundation as it relates to these political contributions in the media, correct?

Mr. KOSKINEN. Well, I read newspapers every day.

Mr. CICILLINE. Okay. Well, is someone at the IRS reviewing this or will someone initiate some review of these illegal political contributions by the Trump Foundation?

Mr. KOSKINEN. As I have tried to make clear, we never talk about the status of any taxpayer. And we get referrals from the public, from Members of Congress suggesting that we look into particular activities of companies, charitable organizations, and others. There is a process with appropriate reviews and controls it goes through. But we never respond.

Mr. CICILLINE. Okay.

Mr. KOSKINEN. If you write us a letter, we tell you thank you for the letter; we don't tell you what the action is we are going to take.

Mr. CICILLINE. Thank you.

Mr. KOSKINEN. And so I can't tell you.

Mr. CICILLINE. Thank you, Commissioner.

And so one final question. An issue which has been raised by my constituents with some frequency are difficulties they have when they call the IRS and they are put on hold for an extended period of time, really unreasonable lengths of time as they are waiting to speak to an IRS official.

Can you talk about what efforts are being made to reduce that waiting time? And more generally, would you address the impact of the deep budget cuts on your ability to deliver services to my constituents and to constituents all across this country?

Mr. KOSKINEN. Well, if I could respond, the question was raised by the Congressman from Texas about what we do with the \$290 million. What we did with that was we hired, partially—we hired a thousand people during tax filing season, and the level of phone service went from 37 percent, a totally unacceptable rate the year before, to 70 percent. But because the amount of money provided was less than half of what we requested, I advised the appropriators that after the end of the filing season, the people we had hired, the money ran out, and the people would go away.

So our level of taxpayer service right now is back to an unacceptable level. It is a simple algorithm: If we have the money, we hire the people, they answer the phone; if we don't have the money, we don't have the people, then we don't have enough people to answer the phone.

Mr. CICILLINE. So the people who are being required to stay on those phones and wait for an IRS, Commissioner, don't have you to blame, they have Congress to blame for not appropriating the resources necessary to serve our constituents properly?

Mr. GOODLATTE. The time of the gentleman has expired. The witness will be permitted to answer the question.

Mr. KOSKINEN. I have tried to make it clear to appropriators in the Congress that it is—you know, we do the best we can. We have an obligation to provide taxpayers the best service we can. But it is a direct correlation between the amount of funding and the amount of service we can provide.

The \$900 million cuts over the last 6 years means that we are significantly constrained. We did appreciate the \$290 million from the Congress and we provided reports on how we actually used all of those funds for protecting taxpayers, cybersecurity, and taxpayer service.

Mr. CICILLINE. Thank you, Commissioner.

I yield back, Mr. Chairman.

Mr. GOODLATTE. The Chair recognizes the gentleman from Texas, Mr. Farenthold, for 5 minutes.

Mr. FARENTHOLD. Thank you, Chairman Goodlatte.

Commissioner Koskinen, you testified in response to a couple of questions that as a result of the Lois Lerner treatment of conservative organizations, several people are no longer with the IRS. Were any of those people fired or did they all resign?

Mr. KOSKINEN. I actually don't know. All of that happened before I got there. All I know is the five people in the order either resigned. There were reviews done on a personal basis, and I don't know which of those people resigned and which of them resigned in the face of, in some cases, knowledge they were about to be fired. But I don't know that, and if I did know, I wouldn't be able to tell you the details anyway.

Mr. FARENTHOLD. And you talked about these two gentlemen who degaussed the tapes and you have repeatedly said that it was an honest mistake. Do you know if these gentlemen were aware of the order to preserve data?

Mr. KOSKINEN. I have not done the investigation. The IG's investigation reported that they were not aware, that they actually thought—these were labeled as junk and they thought it was junk. They had already degaussed some earlier, 2 years ago. And their understanding, they were junk. They came with a label saying for disposition, and they disposed of them.

Mr. FARENTHOLD. And you testified that you got the word out as a result of the subpoena not to destroy any evidence. How did you get that information out?

Mr. KOSKINEN. The word was already out in the spring—in the summer of 2013.

Mr. FARENTHOLD. Right. But how did you communicate it to the employees where, when someone who is in charge of destroying a potential media that would contain these didn't get a hold of it? Was there an email?

Mr. KOSKINEN. Yes. There were emails in 2013; there were further emails in 2014. But as I have said, it shouldn't have happened, and it clearly was not an appropriate level.

Mr. FARENTHOLD. So what I am getting is the fact that this email did not get to people who actually physically destroy backup tapes seems to indicate a management failure. So I would ask that you would get us copies of those emails and who they were distributed to.

You know, I am a small-business man, I have never had more than about 40 people working for me. But if we were to get an order from Congress or a court or the IRS not to destroy evidence, we would—I mean, we would probably pull the hard drives out of all the computers so something isn't actually erased accidentally.

As an attorney, I know that a claim of spoliation of evidence really weighs against you. In Texas, you are entitled to a jury instruction telling the jury that you can assume the worst was in those emails.

Mr. KOSKINEN. I have been educated by Congressman Gowdy about spoliation since I did not know it originally. It takes—it has to be an intentional destruction for it to be assumed that, in fact,

you can assume the worst. There was thus far no finding that it was intentional.

Mr. FARENTHOLD. I am going to go a little bit and take a step back, because, you know, we are talking about articles of impeachment against you.

One of the things I hear consistently from my constituents in Texas is, all you guys in Congress do is go yell and scream and beat on your chest. In fact, I hear it from some of the folks on the other side of the aisle.

When we find wrongdoing in government, Congress has a limited number of remedies. We can write a law to change it, try to fix things, but that has got to get passed by the Senate and signed by the President. So if it is something the other side doesn't like, right now this Congress is out of luck.

You know, people say, oh, you have got the power of the purse, but the Senate won't take up our appropriations bills and we are continued to forced to do continuing resolutions and face claims of, oh, you are shutting down the government and all of this nonsense. So the power of the purse is basically gone.

We had Eric Holder held in contempt of Congress, we had a Committee recommend criminal charges against Lois Lerner herself, and last week Brian Pagliano refused simply to show up, and the Justice Department isn't doing anything.

So our bag of tricks is getting kind of shallow, and impeachment is in there. And I think one of the reasons we are pulling it out is that the Justice Department and the Obama administration are failing to cooperate with Congress. The Justice Department, rather than being the people's lawyer, are turning out to be the Administration lawyers, and you may be the victim of this.

I mean, do you have any suggestions on how we should get more cooperation from people before this Committee, the Oversight Committee, and the rest of Congress?

Mr. KOSKINEN. Well, whatever the Oversight Committee is doing, they take—they have noted on their Web site, or at least it was until recently on their Web site, 20 executives in the government that they thought should be removed or leave. They have big pictures and they have big red X's through 18 of them. So they have been successful 90 percent of the time. I am one of the two that they have not thus far been able to get—

Mr. FARENTHOLD. I guess the other weapon we have are these hearings in getting the public behind us on that.

And I appreciate your courage coming here and testifying.

Mr. KOSKINEN. Thank you.

Mr. FARENTHOLD. But I really am disappointed that these things happened, and happened under your watch, and the buck has got to stop somewhere.

And I see I am out of time.

Mr. GOODLATTE. Would the gentleman—without objection, the gentleman is granted an additional 30 seconds. Would the gentleman yield?

Mr. FARENTHOLD. Yeah, I will.

Mr. GOODLATTE. Thank you. You asked a question that Chairman Chaffetz and I would both like to pose to the commissioner a slightly different way.

Can you please provide to this Committee and to the Committee on Oversight and Government Reform any written communication, not just emails, any written communication that you or anyone else made instructing IRS employees to preserve records responsive to congressional subpoenas?

Mr. FARENTHOLD. And who it went to.

Mr. GOODLATTE. And who they went to.

Mr. KOSKINEN. Yes. We will be happy to do that.

Mr. GOODLATTE. Thank you.

The Chair now recognizes the gentleman from Michigan, Mr. Bishop, for 5 minutes.

Mr. BISHOP. Mr. Commissioner, thank you very much for being here. Thank you for your time and your patience answering the questions today, much of which has been asked and re-asked.

I apologize if I get into that area, but I represent 770,000 constituents, all of which have an opinion about something, as well they should, but not many resonate, not many issues resonate as they have on this issue in particular with the IRS, because it impacts everyone.

And the question has to do with the way in which it is hypocrisy that the IRS expects citizens to live up to a certain standard but doesn't hold themselves to that very standard. And as a former businessman and person who complied as a citizen, I am asked to comply with the IRS. If I were audited and the IRS showed up at my doorstep and they said, "Where is the information?" and I said, "My server crashed, sorry," I don't think the IRS would be as lenient with me as the government has been with the IRS in such a circumstance.

So this is what angers people, this is why a hearing like this happens. And I think this is regular order for a Committee like this to bring this issue forward, because, as my colleague said earlier, we have run out of options. Our job is to oversee and make sure that government runs properly and according to law.

And my frustration sitting on this Committee and being a part of all this is that it doesn't operate that way, that we very infrequently have real oversight, that those who come before this Committee oftentimes just stare us down and go on their merry way, they take a lashing and leave, as though they have done their job.

But it is very frustrating for me. I have learned that—I will not accept it. This all has to change.

But I want to ask you, the IRS has promised to deliver all of Lois Lerner's emails relating to the targeting of various conservative organizations, but was unable to because her hard drive had failed and a substantial amount of backups—the backups were destroyed as well. I wanted to ask you about the backups.

Ordinarily there is a forensic research—if I am running these operations, I go and make sure that every possible remedy, every possible option was taken to ensure that we checked everything, to find everything that was asked of us.

Can you tell us whether or not the IRS reviewed the backup tapes or any information? For example, did they go back and look at the hard drives that handled Lois Lerner's emails? Did they look at the email server? Did they look at the BlackBerrys that she had

then or has now? All of these things. Laptops, did she have more than one?

What was done to try and preserve this information, this critical information for this Committee and the American people?

Mr. KOSKINEN. As I noted, there were—well, all of this started, the investigations started 6 months before I got there. There were instructions issued to preserve all media, and we will share those with the Committee.

The decision in 2013 trying to respond was the most likely place to find these emails was in the hard drives in all of the employees. Hard drives of 88 or 90 employees were pulled, they were reviewed. We had an agreement with the Committees as to what the searches would look like to make sure they were getting everything responsive to the inquiries. And that is how we ended up with 1,300,000 pages of documents.

With regard to Ms. Lerner, there were—78,000 of her emails were provided, 24,000 from that gap period. When I was advised of the gap period in April, I said we need to go and look at everybody she communicated with, because if there was an email in her box, it was on somebody else's as well, and we found 24,000.

Mr. BISHOP. Can I ask you this? Did she ever, after all this happened, did she ever come to your IT department and say, "Someone help me find these emails"?

Mr. KOSKINEN. There are emails—

Mr. BISHOP. Because if my computer crashed, I would say it is critical, especially if I were the director of the IRS. I would immediately go to the IT department and say, "Please help me. Something has gone wrong here. Find my emails."

Mr. KOSKINEN. And there are emails in which she wrote to the IT—sent to the IT department in 2011 saying, my hard drive looks like it doesn't work. It has crashed. Could you fix it? The hard drive was reviewed and worked on by IT, and they sent her a note back saying, we can't find any of the emails. She was, according to the emails, unhappy and upset that the emails had been lost. And they said, the only way to conceive of it would be to send it out somewhere with experts, and they didn't do that.

But they did have—there are contemporaneous emails, which, ironically, were provided to everybody in the end of 2013. So it is not as if there was a conscious effort to hide the issue that her hard drive had crashed. And she had, as you said, been very concerned and asked for help to try to fix it.

Mr. BISHOP. Mr. Chairman, my time has expired. I yield back.

Mr. GOODLATTE. The Chair recognizes the gentleman from Michigan, Mr. Trott, for 5 minutes.

Mr. TROTT. Thank you, Mr. Chairman.

And thank you, Commissioner, for being here.

You know, Commissioner, you have had an extraordinary career. Head of the Soccer Foundation. Head of the Duke University Board. Executive chairman at Freddie Mac. Deputy mayor of D.C. Deputy director of OMB. Ran a large turnaround company. Was in charge of Y2K for the entire country. Clerked for the chief judge for the D.C. circuit. Worked at Gibson Dunn. Duke. Yale. Cambridge. Just an extraordinary record.

You said earlier that you are proud of your record at the IRS. I am not so sure I agree. You came in with two big tasks in front of you, one, the Lois Lerner investigation, and two, to restore the confidence in the American people that their First Amendment rights weren't being compromised by the IRS. And we have heard quite a bit today about our concern with respect to both of those challenges.

But let me ask you a hypothetical. When you were the executive chairman of the Freddie Mac board, if the president and CEO of Freddie Mac lied under oath to Congress or repeatedly misstated important facts or repeatedly was uninformed of decisions being made by subordinates regarding the mortgage crisis, what would you have done?

Mr. KOSKINEN. If he lied under oath to the Congress, we would have considered appropriate disciplinary action, which might have included termination.

Mr. TROTT. If the president of Duke University, when they were doing investigation into the scandal of the lacrosse team, if he had lied or if he had misstated key facts or if he was otherwise uninformed on what the subordinates were doing with respect to that investigation, what would you have done when you were the chair of the Duke Board?

Mr. KOSKINEN. Well, if he was performing in good faith—you are talking about did he intentionally either mislead or obstruct issues.

Mr. TROTT. Well, just gross incompetence. Let's call it that. Let's not say perjury. Let's just say gross incompetence, unaware of the investigation, unaware of the facts, misstating the facts consistently. What would you have done?

Mr. KOSKINEN. At that point, in fact, we would have a discussion. But that doesn't sound like he intentionally—if he was totally unaware, then you would have a serious question.

This is not a situation where the head of the organization was totally aware by any stretch.

Mr. TROTT. Let me—this is not a hypothetical—let me ask you a more recent set of facts.

So yesterday, Senator Warren was screaming at the CEO of Wells Fargo for what happened there to their customers. And I think it is indefensible what happened there. And she called—I think she screamed it several times—"He needs to resign." Do you think the CEO of Wells Fargo should resign?

Mr. KOSKINEN. Not a decision for me to make, but the distinction is people at Wells Fargo knew for the last couple years about that problem. No one at the IRS knew about the erasure of those tapes. This is not a situation where people knew something and were covering it up. Every time—we spent a significant amount of time trying to provide all the information we had.

Mr. TROTT. Well, so you think the CEO of Wells Fargo knew about what has happening?

Mr. KOSKINEN. That is my—all I know is what I read in the newspapers, and my understanding is that the question was that people knew 2 or 3 years ago.

Mr. TROTT. People or the CEO?

Mr. KOSKINEN. I haven't read the details, so I can't tell you for sure. Again, to the best of my knowledge, it is—I don't know the details.

Mr. TROTT. We have heard a lot today from some of the Democratic Members of the Committee that this whole hearing is an embarrassment and we should apologize. And here are the facts as I know them. People are afraid of the IRS. The IRS was used as a political tool under the Nixon administration and now the Obama administration. You were brought in to solve this problem, and under your watch the problem got a lot worse, either because you committed perjury or because you were consistently misinformed regarding critical facts in the investigation or you were unaware of what your subordinates were doing.

Now, we both know—and I spent 30 years in the private sector—we both know in the private sector, the head of the organization, with those facts in front of you, they would have been fired or they would have resigned.

And so when the Dems say this is a charade and a game—and you could say the same about a lot of things here in Washington—but my question to you is, what should I go home on Friday and tell me constituents who are afraid of the IRS and who are disgusted by Washington?

Because what happens when these facts are presented in Washington is either people lie, they cover up, or we have to say, well, you know, we have to expect some level of incompetence from the Federal Government, that is why Washington is a mess.

What should I tell my constituents about what is going on at the IRS and how, under your tenure, this investigation played out? Please give me an answer.

Mr. KOSKINEN. The answer to that is no one lied, no one covered up. And, in fact, the base issue, the mismanagement that led to the improper, totally improper, designation of organizations by their names, has stopped, notwithstanding the issue that there are three that have litigated and have not been decided. We are actually resolving those.

So I think the answer is, no one lied, no one covered up, and, in fact, we take very seriously the obligation to make sure that every taxpayer, no matter their political party, their beliefs, whether they go to church or not, whatever they do, deserves to be treated and needs to be treated, and that is our obligation to treat them fairly.

Mr. TROTT. But, sir, you would have to agree with me. In the private sector, the head of that organization probably wouldn't have survived. Would you agree with that statement?

Mr. KOSKINEN. On these facts, the head of that organization would survive.

Mr. TROTT. All right. I respectfully disagree. Thank you, again, for your time. And I have to say, I don't—I am surprised that you haven't resigned. Because with your extraordinary career, I think there is a part of you, if you disagree with a lot of what we are doing here today would want to say, gosh, I just don't need this, and you would move on and do something else. But I appreciate you being here.

Mr. KOSKINEN. Well, I appreciate that. As I have said, if I could, Mr. Chairman—

Mr. GOODLATTE. You may answer.

Mr. KOSKINEN [continuing]. I have not resigned, A, because I don't think anything has been done that would merit that; B, after all of the, well, tugging and hauling and pushing over the last year, year and a half, my concern is if I am, in fact, forced out and I left, it will simply create a terrible precedent trying to recruit people from the private sector, as I came, on the ground that people can make allegations that are not necessarily subject to a full investigation, can simply make allegations charging you that there were threats of impeachment or censure, and a lot of people are going to say, why should I risk my career or my reputation to do public service in that context.

So my sense is we need to get the closure on this. Because I don't think impeachment is proper. And we need to demonstrate to people you can come into public service and you have an obligation to the taxpayers, you spend taxpayer money, you have an obligation to do your best and perform well. And in some cases, as we noted, on the Oversight Committee list, there are 18 out of 20 that they have so-called targeted that have left. And if you can't meet the expectations, you don't make progress, then you shouldn't be there.

But the total record here is not just (c)(4)s, where we have solved that problem. The total record over the last 3 years is the IRS and its employees have made tremendous progress dealing with a wide range of issues, and I am proud of the record.

Mr. GOODLATTE. The Chair recognizes the gentleman from Wisconsin, Mr. Sensenbrenner, for 5 minutes.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Mr. Koskinen, first of all, thank you for coming here. I think that you have been able to present your side of the story in a very articulate manner in response to both friendly and hostile questions.

I want to make an observation before asking a couple of questions. This Administration has made a career or maybe history of basically ignoring whatever Congress wants to do in furtherance of its constitutional oversight responsibility. That includes blowing off subpoenas, delaying things, not having full disclosures, covering things up. And in the case of Lois Lerner, who was cited for contempt, the U.S. Attorney announced that he would not present the contempt citation of a separate court in a coequal branch of the government to the U.S. District Court for the District of Columbia 30 minutes before he left office following resignation.

That, in my opinion, is an impeachable offense. But since he left office 30 minutes after he committed the offense, there was nothing that Congress could do. You know, I think we have to look at our ourselves. One of the things I think we should do is to allow the counsel for the clerk of the House to be able to go directly into U.S. District Court to enforce congressional subpoenas and, you know, other types of process to support our constitutional oversight responsibility.

And I think a lot of the problems that we have had not just with you and with the IRS, but with a lot of the other agencies, would be resolved if we could go directly into court rather than having to go through the roadblock of the Justice Department.

Now, that being said, I am very curious on how Lois Lerner, who as a member of the senior executive service, and who developed a

reputation as a partisan when she was working for the Federal Election Commission, ended up getting to the IRS and being put in the position that she was in. I know this happened before your time, and I know you probably don't know why, but could you tell me, you know, what the process is of transferring SCS personnel from one agency to another agency and who initiates that and who signs off on that, you know, aside from the member of the SCS who is proposed to be transferred?

Mr. KOSKINEN. Right. You are right, I have no idea how that happened when she arrived. As a general matter, at least at the IRS I can tell you that, we will, if we have an opening, an SCS opening, we will advertise it publicly and it will be open to both government executives within the IRS and across the government and private sector executives who will then have to qualify, determine that they meet the SCS requirements.

When they apply, there are—there is a preliminary screening of all the applications by a panel. There is a separate group of senior executives that then interview the finalists and make a recommendation then to the commissioner on the basis of that review. That second panel is—these are all career employees. The only political appointee at the agency is the commissioner and the chief counsel.

That recommendation goes to—in our case right now—that group are the two deputy commissioners and the chief of staff to the commissioner. They interview then the three or four final panelists and a recommendation comes—

Mr. SENSENBRENNER. Let me see. I don't think it was a coincidence that Lois Lerner left where she was from at the FEC and ended up where she went to in the IRS. You know, there had to be some kind of political design involved in that, and I think Congress should look into whether there are political transfers.

You know, the other thing, you know, I am proud of the fact that I am conservative, and I know you are not. But I think that one of the things that all of us who work for the government are supposed to do is to engender and increase public trust of government institutions, which isn't going very well now.

Now, put yourself in my shoes, you know, somebody who represents 715,000 people in Wisconsin. How do I tell my conservative constituents that they should increase their trust in the IRS and that what happened to a couple of my groups will never, ever happen again? Thank you.

Mr. KOSKINEN. You could tell them there have been six different investigations. The Internal Revenue Service has taken every recommendation they have control over and implemented it. The IG has reviewed the implementation of the IG's recommendation and said we have done a substantial progress, made additional recommendations for additional training before elections, which we have taken; that we have created a risk management operation and organization in the agency, where I have now talked to 22,000 IRS employees in person in townhalls and one of my pitches to them is everyone has to be a risk manager. Everyone has to raise their hand if they think anything is not going the way it should, if there is a mistake or a problem, so that we can deal with it. And I think

you tell them we are committed, and I am personally committed, that that situation was intolerable and should never happen again.

As I said, you should be able to tell your constituents with a straight face that we—still do, even with constrained audits and resources, over 1 million audits this year. And I think the system won't work if people, when they hear from us, think that—wonder who I talked to the wrong way, did I go to the wrong meeting, does anybody know that I belong to this organization. People should be comfortable that the IRS process does not care who they are in person, what their political beliefs are, what organization they belong to, who they voted for.

If they hear from us, it is because of something in either their application or their return. And if somebody else had that same question, subject to resources, they would hear from us as well. The system will not work unless we can get taxpayers to understand that.

And I understand—the reason I took this job, was because I understand that the mistakes that were made, the intolerable operations, were corrosive to public confidence in the agency. We touch virtually every American, 150 million individual taxpayers file with us. They need to be confident that they are going to be treated fairly no matter who they are. And I am committed to that, and your constituents have to know we are committed.

The proof ultimately will be in the pudding. People have to see in our activities that we, in fact, treat everyone the same way. They are all treated fairly. That is our obligation.

Mr. SENSENBRENNER. Thank you.

Mr. GOODLATTE. The Chair recognizes the gentleman from Florida, Mr. DeSantis, for 5 minutes.

Mr. DESANTIS. Commissioner, when does your term of office expire?

Mr. KOSKINEN. My term expires, I think it is November, either 9 or 12 next year.

Mr. DESANTIS. Of 2017?

Mr. KOSKINEN. Yes, I have made it clear I serve—even with a fixed term, I serve at the pleasure of the President. So whoever the new President is can decide to make a change if they would like.

Mr. DESANTIS. So you will offer a resignation, whoever comes in, and you will offer to step aside?

Mr. KOSKINEN. No, I have a fixed term. So unless I actually don't want to fill out my term, I serve at the pleasure—

Mr. DESANTIS. I understand that. But when you say you serve at the pleasure, meaning that if the President came to you and asked you to step aside, you would—

Mr. KOSKINEN. I would.

Mr. DESANTIS [continuing]. If you got fired. But you are not going to offer to step aside unilaterally. Correct?

Mr. KOSKINEN. That is correct.

Mr. DESANTIS. Okay. Now, there has been talk about due process. But I just want to, for the record, we did have a hearing in this Committee, I think it was in July. And you were invited to come to that first hearing, correct, and you chose not to?

Mr. KOSKINEN. Sure. No. As I explained to the Chairman, I had just come back from abroad. And I had a hearing the next day. I

explained to the Chairman I would be delighted to come any time. And I have been delighted on relatively short notice to be here today.

Mr. DESANTIS. Okay. Now, I want to look at your testimony today because there has been a lot of talk, I think justifiable, about some of the things you have said over the course of the investigation later turned out to be false. Now, today you testified that the IRS ended the use of BOLO lists more than 3 years ago. And that is your testimony. Correct?

Mr. KOSKINEN. That is my testimony.

Mr. DESANTIS. Well, how does that square with the D.C. Circuit opinion where the IRS made that exact same argument and the court rejected that? They said, no, you have not ceased the conduct. You have chosen to suspend the use of BOLO lists, which means that you are free to attend, you are free to return to the offending conduct. And that is what the court found.

So for you to say you ended the list, when, in fact, you suspended them, that is not just me being, you know, nitpicky, that is a distinction that the court seized upon and justified in its ruling against the IRS. Shouldn't you have said that you have suspended the use of BOLO lists?

Mr. KOSKINEN. No. The Justice Department has a litigation, and that was what they provided. The IG reviewed this matter over a year and a half ago and agreed that we had terminated. I wrote a letter to all the oversight Committees saying it has been clear—however you call it, terminated, suspended, whatever—

Mr. DESANTIS. Well, it matters legally because if you are suspending it to try to get through a case and then you could return to it, the court thought that that was important.

Mr. KOSKINEN. Yes. Our—

Mr. DESANTIS. So there is no document, though, that says—

Mr. KOSKINEN. Document.

Mr. DESANTIS [continuing]. You ended it or does it say you suspended it?

Mr. KOSKINEN. No. It ends, and I will be happy to share with the Committee the instructions given to all people in the exempt organization decision with regard to this matter, and those instructions went out 3 years ago, and we will share that with you.

The other point—

Mr. DESANTIS. The court rejected that. I mean, you agree with that.

Mr. KOSKINEN. No, the court did not—

Mr. DESANTIS. The court found that the IRS has simply suspended the use of BOLO lists, but that there is—you guys have not proven to the court—which that would have been the time to do it—that you will not return to the offending ways subsequent to the litigation.

Mr. KOSKINEN. Well, I can't speak for the Justice Department and the litigation. All I can tell you is we have provided all of the oversight Committees with the note that we have committed and have terminated the use of BOLO lists. The question about the three that were pending for 50 years, if you are involved with us and then you suddenly go to court, we don't continue to process the audit or the return.

Mr. DESANTIS. But the court rejected that argument, as Mr. Jordan said. To be fair, the court said that that puts people in a catch-22 because you tell them, you know, you are going to violate their rights, and then if they seek litigation to get their rights, then you say, well, we are going to continue to violate your rights until the case is over. And the court thought that that was unacceptable, and I do too.

But let me move on. You have admitted that the subpoenas that were issued for Lerner's emails, that the IRS did not comply because there were tapes that were destroyed. Correct?

Mr. KOSKINEN. That is correct. I mean, if we did not—we were supposed to produce evidence. We could only produce the evidence we had.

Mr. DESANTIS. And I think that you have acknowledged that your June 20, 2014, testimony, you did testify falsely because you said, "Everything has been preserved. Nothing has been destroyed." And of course, as we have established in March, just a few months before that, there were tapes that were destroyed containing pertinent emails.

You also testified that day that "the IRS confirmed that backup tapes no longer existed." I remember that exchange because I was sitting there. They drilled down to you, what does it mean by confirmed. And you said it meant somebody went and checked. And of course that wasn't true. Because although the IRS had destroyed 422 backup tapes, the IG did find backup tapes that were still in existence at the time you made the statement.

You also testified at your confirmation hearings that you believed in transparency and report problems as soon as you knew about them regarding the Lerner production. But you have acknowledged today that you waited 2 months, and that that was a mistake.

One of the other things you said was that the IRS went to "great lengths in order to provide Congress with the material that it requested." You remember making that statement?

Mr. KOSKINEN. I do.

Mr. DESANTIS. Is that false? Did you go to great lengths to provide it? And here is why I ask that. You never—nobody in your organization ever went to the Martinsburg, West Virginia, warehouse where they had the backup tapes. I put it on Google maps today. It is about 76 miles from the District of Columbia. You have complained about how costly it has been to provide information to Congress in the past, but, in fact, that would have taken probably a tank of gas to get there and back.

And yet, the inspector general, when they went there, even though you said you went to great lengths, nobody from your organization had ever gone to retrieve any backup tapes. Isn't that true?

Mr. KOSKINEN. We went to great lengths to respond to the congressional request. We provided—

Mr. DESANTIS. But those great lengths did not involve getting in a car, driving 76 miles, asking for the backup tapes, and then bringing them to Congress. That was a bridge too far for you.

So let me—I am almost out of time. Let me just end with this.

Mr. KOSKINEN. Okay.

Mr. DESANTIS. There has been disputes about did he order the tapes destroyed or whatever. I don't think that that is even the standard. Obviously if you did that, that is a no-brainer. But I believe Justice Story was right when he talked about impeachable offenses being political offenses that grow out of personal misconduct or gross neglect. And he said they must be examined upon very broad and comprehensive principles of public policy and duty.

I think that the IRS had a duty to provide Congress the information. The IRS breached the duty. I think you had a duty to display candor in front of Congress. I think your false statements—although you can say you didn't intend them—I think had you investigated more, you would have known. So I think it is really about breach of duty and about the gross negligence that is at issue here.

I am out of time, and I yield back.

Mr. GOODLATTE. The Chair recognizes the gentleman from Texas, Mr. Ratcliffe, for 5 minutes.

Mr. RATCLIFFE. Thank you, Mr. Chairman.

Commissioner Koskinen, I have listened to you today. I want to make sure that I am summarizing the testimony that I have heard from you and the things that I have heard you say today. I think you've been candid in some of your testimony today, but I want to make sure I am summarizing what has happened on your watch as the commissioner of the IRS for the last 2 years and 9 months.

So I think you have acknowledged that there have been some failures by the IRS under your watch with respect to the retention and preservation of documents. Correct?

Mr. KOSKINEN. That is correct.

Mr. RATCLIFFE. And I think you have acknowledged that there have been failures by the IRS under your watch with respect to the production of documents and other evidence. Correct?

Mr. KOSKINEN. No. We have produced all the documents. Our failure was, in fact, with the documents that we did not have. But we have produced, as I say, 1,300,000 documents.

Mr. RATCLIFFE. Well, you have acknowledged failures by the IRS to testify accurately under oath, specifically yourself on a number of occasions. Correct?

Mr. KOSKINEN. That is correct. I did testify on the basis of what I knew, but it was not—turned out not to be accurate.

Mr. RATCLIFFE. There is a difference between testifying truthfully and testifying to the best of your knowledge. Correct?

Mr. KOSKINEN. No. Actually, truthfully is what you know. Truth is, you know—if I had known it and I hadn't testified about it, that would be a lie. That would be untruthful. At the time, I testified—I have had over—close to 40 hearings. I have never—

Mr. RATCLIFFE. Let me reclaim my time here. You told the OGR Committee that you would produce all of Lois Lerner's subpoenaed emails. That wasn't true.

Mr. KOSKINEN. No, actually, we produced all the emails we had. As I said at that—

Mr. RATCLIFFE. That wasn't my question.

Mr. KOSKINEN. No. At the hearing—

Mr. RATCLIFFE. You didn't produce all of her emails. Did you?

Mr. KOSKINEN. No. At that hearing we had a discussion about the fact that I can't produce emails that I don't have.

Mr. RATCLIFFE. And on June 20, when you said the IRS had preserved every email, that wasn't true?

Mr. KOSKINEN. That was actually—I did not know it, but that was not accurate.

Mr. RATCLIFFE. So it is not true. And of course, as Congressman Gowdy asked you when you said nothing had been lost or destroyed, that was not true.

Mr. KOSKINEN. That is right. I thought it was true at the time.

Mr. RATCLIFFE. So in light of all that—

Mr. KOSKINEN. Pardon?

Mr. RATCLIFFE. In light of those failures, failures to retain documents, preserve documents, testify accurately, I would hope that you would appreciate why it is legitimate for folks to wonder if they should take you at your word that erasing—the erasing of the tapes and the destruction of evidence was accidental, as you have characterized it.

Mr. KOSKINEN. You don't have to take my word. That was the inspector general's results after a year of investigation.

Mr. RATCLIFFE. Yeah. Let me stop you there. Because you have talked about, about how the Department of Justice and how the IG have investigated that and how they have backed you up with respect to it being accidental. But the bad news for you, commissioner, is that being cleared by the Department of Justice in this Administration unfortunately doesn't carry much weight with the American people anymore, not since the attorney general started handing out get-out-of-jail free cards to Obama administration officials like most of us hand out candy on Halloween.

But while we are on the subject, let me ask you this question: In the days before that investigation was closed by the Department of Justice, you didn't happen to have a clandestine but accidental meeting with the attorney general on a plane or a tarmac somewhere, did you?

Mr. KOSKINEN. Never.

Mr. RATCLIFFE. Okay. Well, I hope you can appreciate why I would ask that. Because there is certainly a precedent for that type of thing happening.

Regardless of whether this was accidental, let me concede to you for purposes of your answer that this was accidental. It seems to me, based on what I have heard from your testimony today, that you don't think there should be consequences as a result of that. You know, for ordinary Americans, even if it is an accident, let's say someone gets in a car accident, if someone dies because of it, there are consequences.

Now, someone might get charged with manslaughter, they might get charged with vehicular homicide, they might get charged or they might be sued civilly for gross negligence or negligence. The consequences may be criminal. They may be civil. But there will be consequences. And that is the way our justice system is set up.

But for you and the folks in the IRS, it seems to me that you want a different system and a different set of rules where—one where you can say it was an accident, I am sorry, just move on. And to that point, let me ask you, since you took office to restore confidence and in your words provide accountability and spent

nearly \$20 million to do just that, who has been held accountable at the IRS?

Mr. KOSKINEN. As I noted, the basic issue has been the management mistakes made in terms of identifying people for review just on their names. And all of those people are gone.

With regard to—

Mr. RATCLIFFE. Hold on. Hold on. We are talking about two different things here.

Mr. KOSKINEN. No, no. Now we are talking about since I have been there.

Mr. RATCLIFFE. No, no. I want to talk about, yeah, on your watch—

Mr. KOSKINEN. Can I explain that?

Mr. RATCLIFFE [continuing]. Targeting officials—

Mr. KOSKINEN. Okay.

Mr. RATCLIFFE. All right.

Mr. KOSKINEN. I will tell you, on my watch we have ended the BOLO list. There is no evidence we are targeting any new organizations. We do have three that we suspended we are now going to process. Although, one has sued for an injunction to keep us from processing. But I would note in terms of the overall record, the IG spent a year, and looking at the tapes, found 1,000 emails. We produced 1,300,000 pages. So that—

Mr. RATCLIFFE. That is not my question. My question is who has been held accountable. So you mentioned that you had 50 people advising you. Advising you on your watch, during your watch, which you have acknowledged there were failures to preserve, failures to retain, failures to testify truthfully.

Have any of those folks been terminated. Has anyone been terminated on your watch for those transgressions?

Mr. KOSKINEN. No one has made a transgression that I think is a fireable offense.

Mr. RATCLIFFE. Has anyone been demoted?

Mr. KOSKINEN. No, I am not of—demoted.

Mr. RATCLIFFE. I am not asking for their names. Has anyone been demoted?

Mr. KOSKINEN. I know a few have left.

Mr. RATCLIFFE. That is not my question.

Mr. KOSKINEN. No, nobody's been demoted.

Mr. RATCLIFFE. Has anyone been held accountable? And the answer is no.

Mr. KOSKINEN. I think that is probably right. Because we don't think that anybody consciously or purposely did anything to interfere with the investigation.

Mr. RATCLIFFE. Well, we will just have to disagree on that.

My time has expired. I yield back.

Mr. GOODLATTE. The Chair recognizes the gentleman, Mr. Buck, for 5 minutes.

Mr. BUCK. Thank you, Mr. Chairman.

Commissioner, welcome. You have been here for three and-a-half hours now. The lights are hot and I notice that you have gone through your water. Do you—

Mr. KOSKINEN. Well, I got another half a bottle left. So I am all right.

Mr. BUCK. Oh, okay. Okay. Good. Because I have heard about dehydration affecting people's judgment. I want to make sure you weren't dehydrated today.

Mr. KOSKINEN. Thank you.

Mr. BUCK. Okay. And you don't have pneumonia?

Mr. KOSKINEN. No.

Mr. BUCK. Okay. Good. I wanted to make sure. There is been a lot of talk from the other side of the aisle about due process. And I want to make sure that we have the same understanding of due process. You went to a great law school. You worked for a great law firm. You are well versed in the law and understand due process. And I was a Federal prosecutor. I worked with special agents from the IRS.

When they presented a case to me for charging, I didn't have to talk to the defendant. I didn't have to re-interview the witnesses. The level of due process in a charging decision is simply the person charging making a best effort to determine whether there is guilt or not. You understand that, do you not?

Mr. KOSKINEN. Yes. And that is why, again, I understand the process is if the Committee wanted to charge me, they would go to the House, get a resolution past authorizing the Committee to proceed.

Mr. BUCK. Right. And you would be charged. You would be tried by the Senate with the chief justice sitting, and you would receive due process on the Senate side. To say that there is no due process—

Mr. KOSKINEN. My understanding is that that is not true. If you look at how this Committee has conducted impeachment proceedings historically, the Committee has held hearings. There have been witnesses. There have been the right to cross-examination.

Mr. BUCK. I understand that. But in a charging decision—the Committee's history is one thing. But in a charging decision, the level of due process is based on the judgment of the individual or group charging, not the trial. The trial has a whole different level of due process than the charging decision.

For somebody to say that you have received no due process when you are testifying here, and you have testified in OGR, is just not true.

Mr. KOSKINEN. Well, obviously, there are grand jury proceedings where, in fact, the charge is presented to a grand jury that decides whether there is evidence. My understanding of the process—

Mr. BUCK. And the defendant has a right in a grand jury proceeding to be present?

Mr. KOSKINEN. My understanding of the process is historically the way the House has dealt the impeachment, and the way this Committee has dealt with impeachment, is the Committee has done—has a set of preliminary hearings. The Committee makes a resolution to the House that the House passes authorizing the Committee to proceed with a full investigation set of hearings and investigation. And then the Committee comes back to the floor of the House with the recommendation which would be the charge.

Mr. BUCK. Okay. I appreciate—

Mr. KOSKINEN. The charge is not made directly to the House floor. The charge comes in response to the Judiciary Committee

having been authorized to start an investigation, holding the investigation, presenting witnesses—

Mr. BUCK. I want to move on.

Mr. KOSKINEN [continuing]. And then going back to the floor.

Mr. BUCK. We disagree. I want to move on.

Mr. KOSKINEN. Well, that is fine. Okay.

Mr. BUCK. You are familiar, I take it, with title 44, United States Code section 3103 which deals with retention of records. And the people that work for you are familiar with this also, are you not?

Mr. KOSKINEN. I am not familiar with the statutory issue.

Mr. BUCK. Well, let me read it to you. "The head of each Federal agency." Would you agree with me that you are the head of a Federal agency?

Mr. KOSKINEN. I certainly am.

Mr. BUCK. Okay. "Shall make and preserve records containing adequate and proper documentation." You have a duty to preserve records that have documentation. Is that your understanding according to the archives?

Mr. KOSKINEN. According to the archives.

Mr. BUCK. Okay. And those records may contain essential transactions of the agency. So that is the type of records that you have to maintain are essential transactions—

Mr. KOSKINEN. Those are the official records, right.

Mr. BUCK. And you understand that Lois Lerner's emails were essential transactions of the agency.

Mr. KOSKINEN. Not all of her emails, but a chunk of them were surely. Some emails back and forth are not official records.

Mr. BUCK. Okay. But her emails were important to Congress to determine which were essential and which were not essential. Nobody went through the emails before they were destroyed in West Virginia to determine what was essential and what was not essential.

Mr. KOSKINEN. Exactly. The erasure should not have happened. It should—

Mr. BUCK. So would you agree with me—that is the statute. I have just read you the elements of the statute. Would you agree with me that as the head of the Federal agency that you violated that statute?

Mr. KOSKINEN. No. Actually, I think, as you know, to violate a criminal statute you have to intend to violate that statute. Nobody in the IRS intended to violate any of the statutes. Nobody in the IRS intended to obstruct—

Mr. BUCK. And this is not a criminal statute, sir. This is not a criminal statute. There is no criminal penalty associated with it. This is the statute that defines what records need to be archived and the duties of the head of the agency. Would you agree with me that you violated those three elements as I described them to you?

Mr. KOSKINEN. No. Again, I think you violate it when you consciously decide. Did we do it appropriately? Was it perfect? The answer is no. We have had an ongoing process with the National Archives about—we have an antiquated system—about making sure that we are capturing official documents and official records.

Mr. BUCK. But you have now filibustered me out of time. I can't ask you, but there are strict liability crimes. There are other crimes where you don't need to have the intent.

I would yield to the Chairman.

Mr. GOODLATTE. Without objection, the gentleman is recognized for an additional minute if he would yield to the gentleman from Ohio, Mr. Jordan.

Mr. BUCK. Yes.

Mr. JORDAN. I thank the gentleman for yielding.

Mr. Koskinen, these two guys down in Martinsburg, the midnight shift guys, were they employees of the IRS or were they contracted to work for the IRS, to do work for the IRS?

Mr. KOSKINEN. They are GS-4 employees of the IRS.

Mr. JORDAN. They are employees of the IRS. About 90,000 people work for the IRS. Is that accurate?

Mr. KOSKINEN. There were 90,000. We are down to 80,000.

Mr. JORDAN. Okay. 80,000 people. Of those 80,000, how many other people in that 80,000 worked the midnight shift?

Mr. KOSKINEN. I have no idea.

Mr. JORDAN. I mean, is that—I mean, when I think about government employees, I don't really associate, you know, other than our military working around the clock, I don't really associate folks in government employment working the midnight shift.

Mr. KOSKINEN. We have a lot of employees working the midnight shifts. We have, during filing seasons, regular—our systems have to be up and running 24 hours a day.

Mr. JORDAN. Okay. All right. Mr. Chairman, I yield back.

Mr. GOODLATTE. Would the gentleman yield to me?

Mr. BUCK. Yes. I yield to the Chairman.

Mr. GOODLATTE. I thank the gentleman for yielding. I want to follow up on that.

You testified today that you wanted—you waited 2 months after finding out that the backup media was recycled before you informed Congress, before you informed—

Mr. KOSKINEN. That is not correct.

Mr. GOODLATTE. What is correct?

Mr. KOSKINEN. What is correct is I waited 2 months after I learned of Lois Lerner's hard drive crash. I didn't learn about the erasure of the tapes until 2015, long after these hearings.

Mr. GOODLATTE. Okay.

Mr. KOSKINEN. There are two sets of issues. One is Lois Lerner's hard drive crash in 2011; the other is the erasure in Martinsburg, which nobody knew until the IG reported it in 2015. So what I waited for was I had been advised there had been a hard drive crash. What I did was I said we need to then look at everybody who communicated with Ms. Lerner in that time to see how many of those emails we can capture. And that is how we captured 24,000 emails from that time period.

As I have said, in retrospect—there was no hearing in between times, but as—in retrospect, I should have actually advised the Congress while we were doing that search.

Mr. GOODLATTE. All right. Thank you very much.

This concludes today's hearing. Commissioner, you have given us a lot of your time. We thank you for attending. I want to point out

to you that without objection, all Members will have 5 legislative days to submit additional written questions to you or additional materials for the record. And we would ask that you respond to those, and I think it will be in your interest to respond to those written questions promptly.

Mr. KOSKINEN. I will get to them as quickly as we can.

Mr. GOODLATTE. Thank you. And with that, the hearing is adjourned.

[Whereupon, at 1:37 p.m., the Committee was adjourned.]

A P P E N D I X

---

MATERIAL SUBMITTED FOR THE HEARING RECORD

**Congress of the United States**  
**Washington, DC 20515**

September 20, 2016

The Honorable Bob Goodlatte, Chairman  
The Honorable John Conyers, Jr., Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman and Mr. Ranking Member:

As you prepare for tomorrow's hearing with Internal Revenue Service (IRS) Commissioner John Koskinen, we wanted to bring to your attention a critical new piece of information that relates directly to your inquiry.

As you know, certain Republican Members of Congress have renewed their effort to impeach Commissioner Koskinen in recent weeks, and their core accusation is that Commissioner Koskinen ordered the destruction of documents to conceal them from congressional and law enforcement investigators.

For example, Rep. John Fleming—the sponsor of the impeachment resolution—has been making this grave accusation in campaign ads in Louisiana as part of his bid for U.S. Senate. Specifically, one of his radio ads claims: "The head of the IRS ordered 24,000 emails erased before Congress could review them, making sure the American people will never know the real truth."

The fundamental problem with this accusation is that there is no evidence to support it. To the contrary, this specific allegation has been investigated and debunked by the Treasury Inspector General for Tax Administration, which is led by J. Russell George, who formerly served as a Republican staff member of the House Committee on Oversight and Government Reform.

On June 30, 2015, the Inspector General's office issued a Report of Investigation entitled "Exempt Organizations Data Loss" (#54-1406-008-I). According to this report, the Inspector General's staff interviewed 118 witnesses—far more than the Oversight and Government Reform Committee, Ways and Means Committee, or the Judiciary Committee—and they reviewed emails from employees in Martinsburg, West Virginia, where two low-level employees recycled, or "degaussed," backup tapes that included emails from Lois Lerner.

In its report last year, the Inspector General's office concluded: "No evidence was uncovered that any IRS employees had been directed to destroy or hide information from Congress, the DOJ, or TIGTA."

The Honorable Bob Goodlatte, Chairman  
The Honorable John Conyers, Jr., Ranking Member

When Rep. Fleming reintroduced his impeachment resolution last week, Oversight Committee Ranking Member Elijah Cummings and Ways and Means Committee Ranking Member Sander Levin sent a letter to the Inspector General. The purpose of this letter was to determine whether the Inspector General's investigators had obtained any evidence whatsoever over the past year since they issued their report that would cause them to change their conclusion.

The next day, on September 15, 2016, Inspector General George sent a letter in response to Ranking Member Cummings and Ranking Member Levin. In his letter, Inspector General George wrote: "At this time, no additional information has been uncovered that changes our conclusion in the report." We are attaching both letters for your review.

Because Rep. Fleming's accusations against Commissioner Koskinen have no basis in fact, PolitiFact has rated it as "false":

Emails were erased, and up to 24,000 are likely unrecoverable. However, there's **zero evidence** that the head of the IRS ordered them destroyed. Multiple independent investigations confirmed that the erasure was accidental and **not intended to obstruct information from Congress**. Fleming's ad says the opposite.

We rate this claim **False**.<sup>1</sup>

We are certain that you agree that the Judiciary Committee is an esteemed body that should not be abused in an effort to promote unsubstantiated campaign ads. We urge all Members to consider the evidence that has been obtained and the conclusions that several previous investigations have made in this case after reviewing a much more substantial record. If the Judiciary Committee decides to continue down this path with additional hearings, then we suggest that you invite the Inspector General to testify about his findings and the extensive investigation his office has conducted on this matter.

We appreciate your consideration of this information.

Sincerely,

  
Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform

  
Sander Levin  
Ranking Member  
Committee on Ways and Means

<sup>1</sup> *John Fleming Attacks IRS in Inaccurate Radio Ad*, PolitiFact (Sept. 15, 2016) (online at [www.politifact.com/truth-o-meter/statements/2016/sep/15/john-fleming/john-fleming-attacks-irs-inaccurate-radio-ad/](http://www.politifact.com/truth-o-meter/statements/2016/sep/15/john-fleming/john-fleming-attacks-irs-inaccurate-radio-ad/)) (emphasis added).

The Honorable Bob Goodlatte, Chairman  
The Honorable John Conyers, Jr., Ranking Member

<u>Steve E. Plasket</u>	<u>Charles B. Rangel</u>
<u>Ted W. Lieu</u>	<u>Jim M. McDermott</u>
<u>Ch. G. Ross</u>	<u>Dr. Lewis</u>
<u>Tom</u>	<u>Robert E. Neal</u>
<u>Brenda K. Lawrence</u>	<u>Sam</u>
<u>MARK</u>	<u>Frank D. Rogers</u>
<u>Rep. Wefer</u>	<u>Mike Simpson</u>
<u>Steve Largent</u>	<u>John B. Lamm</u>
<u>Mark E. Connelly</u>	<u>Carl Blumen</u>
<u>Carolyn B. Maloney</u>	<u>Ron Kind</u>
<u>Michelle Lujan Grisham</u>	<u>Bill Pascrell Jr</u>

The Honorable Bob Goodlatte, Chairman  
The Honorable John Conyers, Jr., Ranking Member

*Frank R. Byrd*

*Boo Watson Wilner*

*Tammy Duckworth*

*Ralph J. Kelly*

*Wm Lacy Clay*

*Joseph R. Manly*

*Dan Claitor*

*Linda J. Seier*



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20005

September 15, 2016

DELIVERED VIA ELECTRONIC MAIL

The Honorable Sander Levin  
Ranking Member  
United States House of Representatives  
Committee on Ways and Means  
1106 Longworth House Office Building  
Washington DC 20515

The Honorable Elijah E. Cummings  
Ranking Member  
United States House of Representatives  
Committee on Oversight and Government Reform  
2471 Rayburn House Office Building  
Washington, DC 20515

Dear Ranking Members Levin and Cummings:

I have received your September 14, 2016 letter regarding TIGTA's June 30, 2015 report of investigation entitled "Exempt Organization Data Loss" and its conclusion that "No evidence was uncovered that any IRS employees had been directed to destroy or hide information from Congress, the DOJ, or TIGTA." In your letter, you specifically ask, "Since issuing this report, has your office changed its previous conclusion on this matter?"

At this time, no additional information has been uncovered that changes our conclusion in the report.

Please feel free to contact me with any questions at 202-622-6500 or have your staff contact David Barnes, acting congressional liaison, at 202-622-3062.

Sincerely,

A handwritten signature in cursive script that reads "J. Russell George".

J. Russell George  
Inspector General



Congress of the United States  
Washington, DC 20515

September 14, 2016

The Honorable J. Russell George  
Treasury Inspector General for Tax Administration  
U.S. Department of the Treasury  
City Center Building  
1401 H Street, N.W., Suite 469  
Washington, D.C. 20005

Dear Mr. Inspector General:

As you may know, certain Members of the House of Representatives have renewed their effort to impeach Internal Revenue Service Commissioner John Koskinen. One of their primary accusations is that the Commissioner ordered the destruction of documents to conceal them from investigators.

On June 30, 2015, your office issued a Report of Investigation entitled "Exempt Organizations Data Loss" (#54-1406-008-1). According to that report, your staff interviewed 118 witnesses and reviewed employee emails in Martinsburg, West Virginia, where two low-level employees recycled, or "degaussed," backup tapes that included emails from Lois Lerner.

In this report, your office concluded: **"No evidence was uncovered that any IRS employees had been directed to destroy or hide information from Congress, the DOJ, or TIGTA."**

We are writing with a simple question: **Since issuing this report, has your office changed its previous conclusion on this matter?**

We would greatly appreciate if you would respond to this letter by 10 a.m. tomorrow morning. We apologize for the urgent nature of this request, but the resolution at issue was introduced yesterday and may be considered as early as tomorrow. We appreciate your consideration of this request on this very important matter.

Sincerely,



Elijah L. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform



Sander Levin  
Ranking Member  
Committee on Ways and Means