



May 17, 2016

Hon. Robert Goodlatte
Chairman, House Judiciary Committee
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte,

On October 27, 2015, H.Res. 494, a resolution with articles of impeachment of IRS Commissioner Koskinen was referred to the Judiciary Committee.

The unlawful and deceitful use of the Internal Revenue Service to persecute conservative and tea party groups in order to affect the result of the 2012 presidential election has gone completely uncorrected and unpunished. Nobody has been fired. Nobody has been fined. Nobody has been imprisoned.

If the United States are to remain a free republic, this state of affairs cannot be accepted.

We call on you to take action on H.Res. 494 with determination and a spirit of vigorous action. The behavior of Commissioner Koskinen is a dark stain on the long history of the Treasury Department. Without delay, the Judiciary Committee should hold public hearings on H.Res. 494.

The core of the case to remove Commissioner Koskinen is summarized in the Oversight Committee's report:

- Commissioner Koskinen failed to comply with a subpoena resulting in destruction of key evidence. Commissioner Koskinen failed to locate and preserve IRS records in accordance with a congressional subpoena and an internal preservation order. The IRS erased 422 backup tapes containing as many as 24,000 of Lois Lerner's emails—key pieces of evidence that were in the agency's possession, and destroyed, on Koskinen's watch.

- Commissioner Koskinen failed to testify truthfully and provided false and misleading information. Commissioner Koskinen testified the IRS turned over all emails relevant to the congressional investigation, including all of Ms. Lerner's emails. When the agency determined Ms. Lerner's emails were missing, Commissioner Koskinen testified the emails were unrecoverable. Neither of these statements was true.
- Commissioner Koskinen failed to notify Congress that key evidence was missing. The IRS knew Lois Lerner's emails were missing in February 2014. In fact, they were not missing; the IRS destroyed the emails on March 4, 2014. The IRS did not notify Congress the emails were missing until June 2014 - four months later, and well after the White House and the Treasury Department were notified.

The failure to comply with a congressional subpoena is an act (Contempt of Congress) that can be prosecuted under the inherent enforcement power of the Congress, at the bar of the chamber issuing the subpoena, with the confinement of the violator until compliance or the end of the session of Congress. It is also a statutory crime for which a person, upon conviction in the U.S. District Court, may be sentenced to a fine of up to \$100,000 and imprisonment for up to one year (2 U.S. Code Sec. 192). A good treatment of the enforcement of congressional subpoenas by the inherent power of Congress and by statutory enforcement through the cooperation of the executive and judicial branches may be found at pages 4-7 of this 2014 report from the Congressional Research Service: <https://www.fas.org/sqp/crs/misc/RL34114.pdf>.

Testifying falsely to Congress is certainly an act in contempt of Congress. Willfully testifying falsely on a material matter is the statutory crime of perjury (18 U.S. Code Sec. 1621). The making of false statements to Congress is a statutory crime (18 U.S. Code Sec. 1001).

The destruction or hiding of evidence that has been subpoenaed by Congress is certainly an act in contempt of Congress. It is also the statutory crime of Obstruction of Congress (18 U.S. Code Sec. 1505).

We point out the acts committed by Commissioner Koskinen that a conscientious prosecutor would investigate and prosecute as federal crimes in order to underline the objective serious nature of Koskinen's bad acts. But as Professor McDowell related in the *George Washington Law Review* in 1999, when the framers of the Constitution put the impeachment grounds of "high Crimes and Misdemeanors" into Article II, Section 4, they purposefully used a term that at the time had a clear and unambiguous meaning from British impeachment practice that, quoting Justice Story,

"reaches what are aptly termed political offenses, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, in the discharge of the duties of political office."

Gary L. McDowell, "High Crimes and Misdemeanors": *Recovering the Intentions of the Founders*, 67 *Geo. Wash. Int'l. L. Rev.* 626, 639 (1999).
<http://scholarship.richmond.edu/cgi/viewcontent.cgi?article=2156&context=law-faculty-publications>

Likewise, Professor Gerhardt has told us that

... the framers and ratifiers seemed to have shared a common understanding of impeachment as a political proceeding and impeachable offenses as political crimes. The delegates at the constitutional convention were intimately familiar with impeachment in colonial America, which, like impeachment in England, had basically been a political proceeding.

* * *

Both Justices James Wilson and Joseph Story expressed agreement with Hamilton's understanding of impeachment as a political proceeding and impeachable offenses as political crimes. In a series of lectures on the new Constitution given immediately after his appointment to the Supreme Court, Justice Wilson referred to impeachments as involving, *inter alia*, "political crimes and misdemeanors." Justice Wilson understood the term *high* describing "Crimes and Misdemeanors" to mean "political" almost certainly in the same sense as Hamilton had.

(pp. 104-105, *The Federal Impeachment Process*)

Gerhardt, Michael J. *The Federal Impeachment Process: A Constitutional and Historical Analysis, Second Edition*. Chicago: The University of Chicago Press, 2000.

http://www.amazon.com/Federal-Impeachment-Process-Constitutional-Historical/dp/0226289575/ref=sr_1_1?s=books&ie=UTF8&qid=1457626074&sr=1-1&keywords=The+Federal+Impeachment+Process+Michael+J.+Gerhardt

And we want to make a note about evidence. Recently we have heard from a member about the difficulty of assembling a case against Commissioner Koskinen; an example was given of testimony that would be inadmissible because of the "hearsay rule" of evidence. We again refer to Professor Gerhardt:

It is unnecessary to make any particular rules of evidence applicable to impeachment proceedings. Both state and federal courts require special rules of evidence to make trials more efficient or fair or to keep certain evidence away from a jury, whose members might not understand or appreciate its reliability, credibility, or potentially prejudicial effect. The concerns leading to the use of special rules of evidence in state and federal courts do not, however, apply to impeachment trials. An

impeachment trial is not the usual kind of trial, nor does it involve a typical jury. Rather, impeachments are extraordinary hearings administered by a sophisticated and politically savvy body—the Congress of the United States.

As Charles Black suggests, “the House and Senate ought to hear and consider *all* evidence which seems relevant, without regard to technical rules.” In the House, the need for a thorough investigation is paramount, and the risk of error is minimal, because the House has no punitive authority. Once the matter gets to the Senate, which does have the power to impose special punishments, the risk of error may be greater, but, as Black argues further, “Senators are in any case continually exposed to ‘hearsay’ evidence; they cannot be sequestered and kept away from newspapers, like a jury. If they cannot be trusted to weigh evidence, appropriately discounting for all the factors of unreliability that have led to our keeping some evidence away from juries, then they are not in any way up to the job, and ‘rules of evidence’ will not help.”

(pp. 115-116, *The Federal Impeachment Process*)

Moving forward to hold hearings on H.Res. 494 should not be seen as a partisan exercise. Commissioner Koskinen showed great disrespect to Oversight Committee Ranking Member Elijah Cummings when he gave him a glib and grossly insincere promise to comply with the committee’s subpoena as related on pages 16-17 of the Oversight Committee Report.

Serious and urgent action on H.Res. 494 is owed to the American people by their representatives in Washington. Please do not disappoint them.

Sincerely,

Morton C. Blackwell, Chairman
The Weyrich Lunch

Colin A. Hanna, Co-Chairman
The Weyrich Lunch

Grover Norquist, President
Americans for Tax Reform

Richard A. Viguerie
Chairman, ConservativeHQ.com

Gary L. Bauer, President
American Values

Ron Robinson, President
Young America's Foundation

David N. Bossie, President
Citizens United

Mathew D. Staver, Esq., B.C.S.
Founder and Chairman
Liberty Counsel

Rick Scarborough, President
Vision America Action

Lew Uhler, Founder and President
National Tax Limitation Committee

Gary Aldrich, Chairman and Board of Directors
CNP Action, Inc.

Ted Baehr, Publisher
MOVIEGUIDE(R)
Member, Broadcast Film Critics Association

James L. Martin, Chairman
60 Plus Association

Heather R. Higgins, President and CEO
Independent Women's Voice

Carrie Lukas, Managing Director
Independent Women's Forum

Sandy Rios, Director of Governmental Affairs
American Family Association (AFA)

Rev. Lou Sheldon, Founder and Chairman
Traditional Values Coalition

Andrea Lafferty, President
Traditional Values Coalition

George Landrith, President
Frontiers of Freedom

C. Preston Noell III, President
Tradition, Family, Property, Inc.

Former Congressman Steve Stockman (TX)
Member of Congress, 1995-1997 & 2013-2015

Art Harman
Former Legislative Director to Rep. Steve Stockman

Paul Caprio, Director
Family Pac Federal

Dr. Jim Garlow,
Pastors Rapid Response Team

Bradley Mattes, President
Life Issues Institute

Ron Pearson, President
Council for America

Susan Carleson, President
American Civil Rights Union

Elaine Donnelly, President
Center for Military Readiness

Quin Hillyer
Veteran Conservative Columnist

Robert K. Fischer
Meeting Coordinator for Conservatives of Faith

Seton Motley, President
Less Government

Michael J. Bowen, National Co-Chair
Coalition for a Strong America

Stephani Scruggs, National Co-Chair
Coalition for a Strong America

Mark J. Fitzgibbons, President of Corporate Affairs
American Target Advertising, Inc.

Judson Phillips
Tea Party Nation

KaLeigh Long- Executive Director
Conservative Leadership PAC

Kay Daly
Ronald Reagan Award Recipient
ACU's 30th Annual CPAC

Jack W. Daly, Esq.
Former Counsel to the Chairman
U.S. Senate Judiciary Committee

Norm Singleton, President
Campaign for Liberty

Dr. Ron Crews, CH (COL) USAR Retired
Executive Director, Chaplain Alliance for Religious Liberty

Andresen Blom, Executive Director
Grassroot Hawaii Action, Inc.

Willes K. Lee, Executive Vice President
National Federation of Republican Assemblies

Melissa Ortiz, Founder & Principal
Able Americans

William H. Shaker, President
The Rule of Law Committee

Robert D. Thompson, Administrator
The Weyrich Lunch

Gene Valentino, Chairman
Citizens for a Just Government

Jay Devereaux, President
Unite in Action

Gerry Johnston, President and CEO
Women for Democracy in America, Inc.

Kristin Fecteau, Co-Founder
Coalition to Free America

Trayce Bradford, President
Texas Eagle Forum

Cathie Adams
23-year former President of Texas Eagle Forum
Former Chairman of the Republican Party of Texas

Col. Rob Maness (USAF, Ret.), candidate for U.S. Senate from Louisiana

Wendy Wright

CC:

Hon. Paul Ryan, Speaker of the House of Representatives
Hon. Kevin McCarthy, House Majority Leader
Hon. Steve Scalise, House Majority Whip
Hon. Cathy McMorris Rodgers, House Republican Conference Chairman
Hon. Virginia Foxx House Republican Conference Secretary
Hon. Luke Messer, House Republican Policy Chairman
Rep. Jason Chaffetz – Chairman, House Oversight and Government Reform Committee
Rep. Peter Roskam, Subcommittee on Oversight Chairman, House Ways and Means Committee