

EXAMINING THE ALLEGATIONS OF MISCONDUCT
AGAINST IRS COMMISSIONER JOHN KOSKINEN
(PART I)

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

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Prepared statement of the Honorable Elijah E. Cummings, a Representative in Congress from the State of Maryland. This statement is available at the Committee and can also be accessed at:

<http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104980>

Staff Reports submitted by the Honorable Darrell E. Issa, a Representative in Congress from the State of California, and Member, Committee on the Judiciary. These reports are available at the Committee and can also be accessed at:

<http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104980>

EXAMINING THE ALLEGATIONS OF MISCONDUCT AGAINST IRS COMMISSIONER JOHN KOSKINEN (PART I)

TUESDAY, MAY 24, 2016

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Committee met, pursuant to call, at 10:05 a.m., in room 2141, Rayburn House Office Building, the Honorable Bob Goodlatte (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Chabot, Issa, King, Franks, Gohmert, Jordan, Poe, Marino, Gowdy, Labrador, Farenthold, Walters, Buck, Ratcliffe, Bishop, Conyers, Lofgren, Jackson Lee, Johnson, DelBene, Jeffries, and Cicilline.

Staff Present: (Majority) Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief Counsel; Zachary Somers, Parliamentarian & General Counsel; Paul Taylor, Chief Counsel, Subcommittee on the Constitution and Civil Justice; (Minority) Perry Apelbaum, Staff Director & Chief Counsel; Aaron Hiller, Chief Oversight Counsel; Susan Jensen, Counsel; Slade Bond, Counsel; and Joseph Ehrenkrantz, Legislative Assistant.

Mr. GOODLATTE. Good morning. The Judiciary Committee will come to order.

And, without objection, the Chair is authorized to declare recesses of the Committee at any time.

We welcome everyone to this morning's hearing on "Examining the Allegations of Misconduct Against IRS Commissioner John Koskinen, Part I." 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 ensure that no 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, and the power to censure, among others. These tools empower Congress to exert oversight over the executive and judicial branches, including routing 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 the 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 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. 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, resulting in this hearing today, which will give the House Oversight and Government Reform Committee the opportunity to formally present its findings and evidence to the Members of this Committee.

We will hear from Representative Jason Chaffetz, the Chairman of the House Oversight and Government Reform Committee, as well as Representative Ron DeSantis, Chairman of the House Oversight and Government Reform Subcommittee on National Security. They will each have 10 minutes to discuss the evidence their Committee investigation has uncovered. Chairman Chaffetz will also present a video regarding this matter.

It is worth noting that Commissioner Koskinen was also invited to the hearing but he has declined the invitation.

Following the witnesses' testimony, each Judiciary Committee Member will be allowed to ask the witnesses questions for 5 minutes.

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.

Before I begin my statement, I ask unanimous consent to enter into the record the statements of IRS Commissioner John Andrew Koskinen and the gentleman from Maryland, Ranking Member Elijah Cummings.

Mr. ISSA. I reserve the right to object.

Mr. GOODLATTE. Does the gentleman—

Mr. ISSA. I object.

Mr. GOODLATTE [continuing]. Wish to be recognized?

Mr. ISSA. I wish to be recognized.

Mr. GOODLATTE. An objection is noted.

Mr. ISSA. If the gentleman would yield?

Mr. CONYERS. Of course.

Mr. ISSA. A point of inquiry related to my objection. The witness was invited to come and has delivered us instead a self-serving written statement. While telling us in the statement he respects the Committee, he is refusing to be here for his own impeachment inquiry.

On what basis would we allow unsworn testimony for what should have been a sworn witness under the penalty of perjury?

Mr. CONYERS. May I?

Mr. ISSA. Of course.

Mr. CONYERS. May I tell my colleague that, first of all, the gentleman who is the subject of this—this is not an impeachment inquiry. I think you used that phrase, and that's incorrect.

Mr. ISSA. It's an inquiry into the recommendation for impeachment.

Mr. CONYERS. The title of the hearing is "Examining the Allegations of Misconduct Against IRS Commissioner John Koskinen, Part I."

Mr. ISSA. And I appreciate that, but he is, in fact, the subject of a referral from another Committee with specificity and was called as a witness to have an opportunity under oath to clear that up.

I guess my question is, where would we normally accept, from a witness who declined, an unsworn statement, one that would not—would be self-serving?

And, to be candid, Ranking Member Conyers, this is sort of Lois Lerner revisited. The opportunity to say what you want to say and not be cross-examined would seem to be inappropriate from a witness who has declined being here.

Obviously, you know, he can say whatever he wants, and he will be at Ways and Means tomorrow saying what he wants to. The question—this is an inquiry into allegations of his misconduct, and it is pursuant to a referral from another Committee, a serious referral, one that never happened in my time—

Mr. CONYERS. Absolutely. I don't quarrel with that whatsoever, sir. All I'm saying is that he is not here. He was not given the customary 2-weeks' notice. He just came back from China last week.

But I'm not making excuses for his absence. All I'm saying is that, since he is not here and he has a statement, I'd like to put it in the record. And if you think that that's something that he doesn't deserve, I'm bound by your objection.

Mr. ISSA. Mr. Chairman, I would ask that if that opening statement be placed in the record it be placed with a provision alongside it for the record that, A, he was invited; B, he declined; and, C, that the letter has to be taken as not witness evidence and self-serving of his not being here.

As long as we can agree to language that effectively makes it clear that this is a self-serving statement by somebody who chose not to be here, while tomorrow will be in front of another Committee, I'm fine with it being there. But I don't want it to be seen as an opening statement, because, quite frankly, this written statement is not—this should not have the same credibility.

Mr. GOODLATTE. The gentleman has the right to object to the statement being made a part of the record. The gentleman can ask unanimous consent to withdraw his objection subject to the limitations that the gentleman just outlined regarding how the matter would appear in the record, but that would, itself, be subject to—

Mr. ISSA. I would ask unanimous consent that the pairing be placed in so that this can be placed in the record at the wishes of the Ranking Member.

Mr. GOODLATTE. For what purpose does the gentleman from Texas seek recognition?

Mr. POE. Mr. Chairman, I object to the unanimous consent that John Koskinen's statement be put in the record at all.

However, the Ranking Member also asked unanimous consent to have the statement of Mr. Elijah Cummings in the record. I do not object to that being part of the record, only the statement of the IRS Commissioner.

Without any provisions as to what should be attached or not attached, I object to the entire statement. He had the chance to be here. He's not.

Mr. GOODLATTE. The Chair will ask if there is objection to the unanimous consent request of the gentleman from Michigan to place Ranking Member Cummings' statement in the record.

Being none, that will be made a part of the record.*

Mr. GOODLATTE. There is objection heard regarding placing the statement of Commissioner Koskinen in the record, and, therefore, it will not be placed in the record.

If there are further discussions regarding under what conditions it might be made a part of the record, the Chair would be happy to entertain that at any time during the course of the hearing. But, at this point, objection is heard, and it will not be made a part of the record.

The gentleman may continue with his opening statement.

Mr. CONYERS. Thank you.

In the history of our Republic, the House of Representatives has voted to impeach a Federal official only 19 times. I have the honor of having served on this Committee to consider 6 of those 19 resolutions, and, as a matter of note, I voted in favor of 5 of them. And I helped to draft articles of impeachment against then-sitting President Richard Nixon and joined with 20 Democrats and 6 Republicans to send 3 of those articles to the House floor.

The lessons I draw from these experiences are hard-earned. And, to begin with, the power of impeachment is a solemn responsibility entrusted to the House of Representatives by the Constitution and to this Committee by our peers.

The formal impeachment process is not to be joined lightly. We do not rush into it for short-term political gain, I'm sure. Before we can approve any such resolution, it's our responsibility to prove the underlying allegations beyond a reasonable doubt. And I suspect that's why this hearing is titled the way it is and is moving in that direction, to examine the allegations of misconduct, which I think is not unfair.

*Note: The prepared statement of Mr. Cummings is not printed in this hearing record but is on file with the Committee and is available at:

<http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104980>

Now, it's our responsibility to prove underlying allegations, even of misconduct, with great seriousness and, I think, beyond a reasonable doubt. And once the House authorizes us to do so, we must carefully and independently review the evidence, even if it's already been analyzed by our colleagues on other Committees. And we can only address allegations that are actually supported by the record. We cannot infer wrongdoing from the facts; we have to prove it.

And, finally, a successful process must transcend party lines. The Framers of the Constitution knew this. Article I of the Constitution requires two-thirds of the Senate to convict on any article suggesting impeachment. Many in the public know this too. When this Committee comes together and decides to examine or remove a Federal officer, our constituents know that we take the job seriously. When a vote such as this is divided on party lines, as it was on one occasion in my service on this Committee, we undermine our credibility and make it all but impossible to secure conviction in the Senate.

Mr. Chairman, we're here today because a group of Members, a small group of Members, want us to take up House Resolution 494, a resolution to impeach IRS Commissioner John Koskinen. This resolution fails by every measure that I have learned of in the course of the hearings in this vein over the years. It arises, sad to say, from the worst partisan instincts. It is not based in the facts. And it has virtually no chance of success, in my view, in the Senate.

Commissioner Koskinen, from what I can determine, is a good and decent civil servant. He took office months after the so-called targeting scandal had concluded. He then undertook a massive effort to respond to each of the investigations into the matter. We are here today to consider the allegation that the Commissioner deliberately misled Congress as a part of those efforts.

The claim is not that we disagree with his decisions or that we question the speed and completeness with which his agency provided answers, but that he knowingly and intentionally supplied us with false information. Mr. Chairman and my colleagues, the record simply does not support this charge.

The Treasury Inspector General for Tax Administration investigated these allegations. He concluded, and I quote, "No evidence was uncovered that any IRS employees have been directed to destroy or hide information from Congress, the Department of Justice, or the inspector general."

In addition, career investigators at the Department of Justice also looked into these claims. They also found, and I quote again, "No evidence that any official involved in the handling of the tax-exempt applications or IRS leadership attempted to obstruct justice."

It's no wonder then that we have read reports of Speaker Ryan doing his best to make certain this measure never reaches the floor of the House, as Speaker Boehner did before him.

It's also not a surprise that many in the Republican Conference have been critical of the tactics that forced this hearing. Representative Boustany, Chairman for the Subcommittee on Tax Policy, has argued that this hearing is a waste of time and potentially dam-

aging to our priorities. He told reporters last week: "If we do this, it's going to further delay the investigation. I think it's time to move on."

Senator Orrin Hatch, the Chairman of the Senate Finance Committee, has said that there is simply no interest in an impeachment activity in the United States Senate, where a two-thirds vote would be required for any conviction. When asked about Commissioner Koskinen, Senator Hatch said, "We have a very different experience with him. We can have our disagreements with him, but that doesn't mean that there's an impeachable offense." And he added, "For the most part, he's been very cooperative with us."

To summarize, Mr. Chairman, the proposed articles have been debunked, the investigation itself, by independent investigators. The resolution faces stiff bipartisan opposition in the House and even worse odds in the United States Senate.

There are precious few working days left in this Congress. I am personally disappointed that we plan to spend not just today but an additional day in June discussing these unsubstantiated claims. If it's at all possible, Chairman Goodlatte, please consider returning the second day to the substantive work of this Committee. In any event, I urge you to lead us past this distraction quickly and back to the work of some actual benefit to the American people.

And I thank you for the time, and I yield back.

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 witnesses today, both of whom are Members of the House Judiciary Committee.

But, as is our custom, if you would both please rise, we'll begin by swearing you in.

Do you and each of 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 very much. Please be seated.

And let the record reflect that both witnesses responded in the affirmative.

I will now begin by introducing today's witnesses.

The first witness is the Honorable Jason Chaffetz. Representative Chaffetz has been a Member of the House Judiciary Committee since first coming to Congress in 2009. Representing the Third District of Utah, he is a Member of the Judiciary Subcommittee on Courts, Intellectual Property, and the Internet; and the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations. Since 2015, Mr. Chaffetz has served as Chairman of the House Oversight and Government Reform Committee.

Our next witness is the Honorable Ron DeSantis. Since being elected to the U.S. House in 2012, Representative DeSantis has served on the Judiciary, Foreign Affairs, and Oversight and Government Reform Committees. He is currently the Chairman of the Oversight Committee's National Security Subcommittee and the Vice-Chairman of the Judiciary Committee's Subcommittee on the Constitution and Civil Justice.

Welcome to you both. Your written testimony will be entered into the record in its entirety, and I ask that each of you summarize your testimony in the time that you are allotted.

To help you stay within that time, there is a timing light on your table. You guys know how this works. When the light turns red, that signals that your time has expired. But, given the importance of this, we have allotted additional time to each of you and for the video that the Chairman has brought with him as well.

We will begin with Chairman Chaffetz.

Welcome.

**TESTIMONY OF THE HONORABLE JASON CHAFFETZ, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH**

Mr. CHAFFETZ. Mr. Chairman, thank you. I appreciate your holding this hearing and your indulgence.

And to Ranking Member Conyers, I enjoy a good working relationship with you. I enjoy your friendship, and I expect that to continue in the future, and I appreciate the discussion today.

I also want to note and thank Chairman Issa. He was the Chairman of the Oversight Committee when much of this work was happening, many of these hearings were happening. And through his good work and tenacious approach to this, it was an important step, and we wouldn't be here today, quite frankly, without the good work and leadership of Darrell Issa.

This is really a simple case, in my mind. When Congress asks you a question, you're expected to give a truthful answer. And when Congress issues a subpoena, compliance is not optional. Imagine if a taxpayer failed to comply with an IRS summons or subpoena. What would they do to you? If they asked you for those materials, you're expected to produce those materials. If you don't, they're going to take you to court, and they're probably going to win.

The IRS targeting scandal was un-American. The IRS is the most powerful and feared entity in the United States. The First Amendment rights of citizens were trampled upon.

Now, in fairness, Mr. Koskinen, as the Commissioner of the IRS, was not there for the initial targeting. He was brought in by President Obama as a turnaround artist, somebody who'd work hand-in-hand with Congress to fix the problem.

From my perspective, he didn't fix the problem; he made it worse. There have been numerous hearings, letters, and subpoenas issued by a variety of Committees.

Now, the IRS is no stranger to a summons or a subpoena. They know exactly how this works. In fact, on average, they issue about 66,000 summons and subpoenas per year, and they have since 2010. Failure to obey an IRS summons is a criminal violation under 26 USC, section 7210, and carries with it a fine up to \$1,000 and a year of imprisonment. If you don't comply, the IRS is going to come after you. They do prosecute. The IRS prevailed in 95 percent of those cases.

Again, compliance with a subpoena is not optional. Providing false testimony before Congress comes with a consequence. At least it should. It's a crime. Mr. Koskinen did not tell the truth to Congress. He provided false testimony and failed to comply with the

subpoena. He could've prevented evidence from being destroyed, but he didn't, and he didn't tell the truth about it.

Americans are rightfully frustrated about the targeting scandal and the lack of accountability. But the case before us is about Mr. Koskinen and what he did and did not do which permanently deprived the American people of understanding what went wrong with their government. It also prevents us, Congress, from fully fixing the problem and holding people accountable. And there can't be full accountability because the evidence was destroyed on Mr. Koskinen's watch and under a subpoena.

The remedy given to us in the Constitution is impeachment. It is a remedy designed for Congress as a co-equal voice. The Senate gives its advice and consent on confirming Presidential appointments, but our Founders in that Constitution also gave us an opportunity to remove somebody if they're not serving the best interests of the United States of America. The Senate has the opportunity to have a co-equal voice on who serves in the upper echelons of government, and the safety valve to pull somebody out of there for Congress is impeachment. It hasn't been done often enough, and I think we must stand up for ourselves.

Now, to give some background, I'm going to show a video. It's about 10 minutes. And then we'll get into the very specifics of where I think Mr. Koskinen lied.

[Video shown.]

Mr. CHAFFETZ. Mr. Chairman, thank you for allowing us to show that video.

I want to drill down a little bit further on Mr. Koskinen's testimony to Congress, especially some of the statements made to Congress in June and July of the year 2014.

When he came to explain why the IRS wouldn't be able to produce thousands of Lois Lerner's emails, at that point a subpoena had been in place since August of 2013. The subpoena was reissued to Mr. Koskinen after he was confirmed, so, by then, the subpoena had had his name on it for more than 5 months.

On February 2, 2014, Super Bowl Sunday, Kate Duval realized that there was a problem with Ms. Lerner's emails and that some of them were missing from the IRS production to Congress. Ms. Duval was counsel to the Commissioner at the time, and she was basically managing the IRS production to Congress.

The next day, on February 3, Ms. Duval told her colleagues at the IRS about the problems she had found. She told the IT people. She talked to the people in the Office of Chief Counsel. She talked to the Deputy Associate Chief Counsel, Thomas Kane. And, by the next day, February 4, Thomas Kane had figured out that Lois Lerner's hard drive had crashed back in 2011 and that that was why many of her emails were missing.

So the IRS knew in early February that there was a problem with Ms. Lerner's emails, and Mr. Koskinen testified that he knew in February. This is his quote on a July 23, 2014, hearing: "What I was advised and knew in February was that when you look at the emails that had already been provided to the Committee and other investigations and, instead of looking at them by search terms, looked at them by date, it was clear that there were fewer emails in the period through 2011 and subsequently. And there

was also, I was told—there had been a problem with Ms. Lerner’s computer.”

So the question is, what did Mr. Koskinen under subpoena do about it? After all, he had the subpoena. He had just learned that most crucial evidence covered by the subpoena was missing, and so you’d expect him to spring into action.

Well, let’s start with what he did not do. According to the Treasury Inspector General for Tax Administration, he failed to look in five of the six places Ms. Lerner’s emails could’ve existed: the backup tapes, her BlackBerry, the server, the backup server, and the loaner—the laptop. In fact, the IRS barely looked for the missing emails at all, according to TIGTA.

Now, let’s talk about what Mr. Koskinen did do. In April, his agency notified the Treasury Department and the White House that Ms. Lerner’s emails were missing. And then he waited. And then he waited some more until June, when the IRS finally told Congress by burying a couple of sentences in the fifth page of an attachment in a letter to the Senate Finance Committee. That was on June 13, 2014.

That triggered a flurry of hearings in Congress, and Mr. Koskinen came up to testify to explain what he said. And then he lied. We’ve got three quotes here I want to share with you, among many. But let’s look at what he told us on June 20 in 2014.

Seven days after finally telling Congress that Ms. Lerner’s emails were missing, he said, “Since the start of the investigation, every email has been preserved. Nothing has been lost. Nothing has been destroyed.”

That’s not true. The investigation began in May of 2012. The Inspector General found the IRS destroyed evidence, 422 backup tapes that contained as many as 24,000 emails to and from Ms. Lerner. And that happened on March 4 of 2014, which was discovered after they discovered there was a problem.

I’ll go to the second quote, if I could. This is on the same day, June 20, 2014. Mr. Koskinen testified before Congress: “We confirmed that backup tapes from 2011 no longer existed.”

That wasn’t true either. The backup tapes were intact until March 4 of 2014, almost 2 years after the congressional investigations began and nearly 1 month after the IRS knew there was a problem with Lois Lerner’s emails. At best, this is gross negligence.

I’ll go to the third quote. To me, this is one of the most troubling. This is July 23, another full month afterwards, July 23 of 2014. He was asked what was meant by the word “confirmed.” He said, “‘Confirmed’ means that somebody went back and looked and made sure that, in fact, any backup tapes that had existed had been recycled.”

That was completely and totally false. Nobody at the IRS went back and confirmed that the tapes had been destroyed. The Inspector General interviewed the people who were responsible, and they said that nobody had ever asked for the backup tapes.

In fact, all told, the Inspector General, it took him 15 days, start to finish, to go find these, and they did recover a thousand emails.

Thanks. You can take that down.

If they had done so after learning that some of Lerner’s emails were missing in early February, they could have found the backup

tapes before they were destroyed. We know this because, again, the Inspector General, it only took them 15 days. Tim Camus, the Deputy Inspector for Investigations at TIGTA, summed it up by testifying: “The best we can determine through the investigations, they just simply didn’t look for those emails. So for the over a thousand emails we found on the backup tapes, we found them because we looked for them.”

We’re here today because Mr. Koskinen provided false testimony, he failed to comply with a duly issued subpoena, and when he knew there was a problem, he failed to properly inform Congress in a timely manner. In fact, I would argue that he actively misled Congress. Nor has Mr. Koskinen ever made an attempt to clarify or amend any of his prior statements. He continues to stand by all of these statements. They are not true.

Look at the testimony that wasn’t entered into the record. Sentence three of the testimony that he put forward, or tried to put forward, here says, “I stand ready to cooperate with your Committee with regard to any actions it deems appropriate.” But I notice that he didn’t show up at the hearing here today even though he was invited.

And for him to say later on page 4, “I testified truthfully and to the best of my knowledge in answering questions concerning the search for and production of emails related to the investigation,” he still doesn’t get it, because that’s not true.

Mr. JOHNSON. Mr. Chairman? Regular order.

Mr. GOODLATTE. Could the gentleman—

Mr. JOHNSON. Regular order, sir.

Mr. GOODLATTE. If the gentleman—

Mr. CHAFFETZ. That was my concluding comment. Thank you.

[The prepared statement of Mr. Chaffetz follows:]

Opening Statement
Oversight and Government Reform Chairman Jason Chaffetz
*Examining the Allegations of Misconduct
Against IRS Commissioner John Koskinen, Part I*
May 24, 2016

I want to thank Chairman Goodlatte for holding today's hearing.

The information I am here to present is the result of years of work by the Oversight and Government Reform Committee, as well as the Ways and Means Committee and the Senate Finance Committee.

Much of that work occurred under the strong leadership of another member of this Committee, Congressman Darrell Issa.

We wouldn't be here today without his leadership on this issue.

This all started with the IRS using its authorities to target certain conservative groups for their beliefs, and in turn suppressing their First Amendment rights through the Exempt Organizations division under the direction of Lois Lerner.

But the heart of this matter is how Commissioner Koskinen responded to the congressional investigations that followed the targeting.

Mr. Koskinen misled Congress about how he allowed thousands of Lois Lerner's emails to be destroyed, despite open investigations by OGR, Ways and Means, Senate Finance, the Inspector General, and the Department of Justice.

I. The IRS Targeted Conservative Groups Applying for 510(c)(4) Status.

I want to begin today by reminding people why we are here and why this is so important.

In early 2010, as the conservative Tea Party movement began to gain momentum, the Exempt Organizations division of the IRS began to impose unfair scrutiny on groups applying for 501(c)(4) status.

Under the direction of Lois Lerner, the division developed special criteria to hold any 501(c)(4) application that was identified as part of the Tea Party movement.

This included terms like, “Tea Party,” “Patriots,” or “9/12.”

In emails, Ms. Lerner stated the “Tea Party matter [was] very dangerous” and believed her office in Cincinnati “should probably NOT have these cases,” implying they should be handled by IRS headquarters here in Washington, DC.

A guide sheet was developed to handle the Tea Party related group applications, but by November 2011, there was a backlog of up to 170 applications pending.

And at that point, things got much worse.

To process the applications, the IRS started sending these groups requests for information, including request for lists of their donors, volunteers, board membership, and political affiliations.

These requests raised a number of red flags and people started publically questioning why the IRS was doing this.

The Oversight and Government Reform Committee requested the Treasury Inspector General for Tax Administration (or TIGTA) review how the Exempt Organization Division was reviewing 501(c)(4) groups applications.

That review by TIGTA found:

- Beginning in 2010, the IRS started using inappropriate criteria to identify Tea Party organizations applying for tax exempt status.
- This criteria was based on the names or policy positions of the group instead of indications of potential political campaign intervention.
- Management at the IRS allowed inappropriate criteria to be developed and stay in place for more than 18 months resulting in substantial delays in processing certain applications and unnecessary information results to be issued.

The day before TIGTA planned to release its findings, on May 10, 2013, Lois Lerner planted a question during a speech at an American Bar Association meeting.

The question was designed to allow her to acknowledge her division had targeted groups based on their political beliefs.

In response to the planted question, she stated:

They used names like Tea Party or Patriots and they selected cases simply because the applications had those names in the title. That was wrong, that was absolutely incorrect, insensitive, and inappropriate.

And initially, President Obama strongly agreed it was wrong.

He stated:

It's inexcusable, and Americans are right to be angry about it, and I am angry about it. I will not tolerate this kind of behavior in any agency, but especially the IRS, given the power that it has and the reach that it has into all of our lives.

At the same time, the Justice Department announced an investigation.

Lois Lerner was placed on administrative leave on May 23, 2013.

At this point, a number of investigations were open into the IRS targeting, including: several House and Senate Committees; an internal IRS investigation; and investigations by the IG and the Justice Department.

Following Lois Lerner's remarks, the Oversight Committee subpoenaed Ms. Lerner to testify.

At the hearing, Ms. Lerner began by announcing she "had done nothing wrong" and had "broken no laws."

After asserting her innocence, she invoked her Fifth Amendment right not to testify.

Given her self-serving opening statement professing her own innocence, the Committee determined she waived her ability to invoke the Fifth Amendment.

She again refused to testify and the House held her in contempt on May 7, 2014.

America would not learn how the IRS had targeted certain groups for their political beliefs directly from Lois Lerner.

The Committee needed to see her emails to understand the full story of how the IRS had attempted to suppress these First Amendment rights.

II. Commissioner Koskinen failed to comply with a congressional subpoena and allowed Lois Lerner's emails to be destroyed.

Mr. Koskinen prevented Congress – and the American people – from ever learning exactly how and why their First Amendment rights were violated.

Over the course of our investigation, Mr. Koskinen has misled us about the efforts taken to locate and preserve Lois Lerner's emails.

His actions are in contradiction of the initial promises he made during his Senate confirmation hearings.

During those hearings he promised he would “be transparent about any problems we run into; and the public and certainly this committee will know about those problems as soon as we do.”

That was not the case.

After the IRS failed to comply with a voluntary request, OGR sent a subpoena to the agency on August 2, 2013 requesting all of Lois Lerner's emails.

Once Mr. Koskinen was confirmed in December of 2013, the Committee reissued the subpoena to him in February 2014.

That same month, on February 2, 2014, Catherine Duvall – Counselor to the Commissioner – noticed a huge gap in the Lerner emails being produced.

- She saw there were few emails for Lois Lerner dated *before* 2011 due to Ms. Lerner's hard drive crashing around that time.
- The emails lost to the hard drive crash were substantial.
- The agency had collected 16,000 emails from the period *after* April 2011 and *less than* 100 from the period before April 2011.
- Most concerning, the time period of missing emails was the height of when Lois Lerner's division was targeting conservative groups – the most relevant period.
- It was during this time she referred to the Tea Party groups as “very dangerous” and requested a review of Crossroads GPS's application by her senior staff.

At the same time Ms. Duvall realized the Lois Lerner emails were missing, the President was on national television telling the American people “not even a smidgen of corruption” existed in the IRS targeting scandal.

This was a complete about-face from his initial comments that the targeting was “inexcusable.”

When the agency knew the emails were missing, they notified the White House and the Treasury Department in April.

They did not notify Congress till June.

Mr. Koskinen testified to our Committee the agency was aware that a substantial number of Ms. Lerner's emails were missing in February 2014.

Did the IRS full its legal obligation to comply with the subpoena?

The Inspector General testified about the emails that the IRS “simply didn't look for them.”

One month after discovering Lois Lerner emails were missing, on March 4, IRS employees working the midnight shift at a facility in Martinsburg, West Virginia magnetically erased 422 back-up tapes containing Lois Lerner's emails.

- Those tapes contained as many as 24,000 Lerner emails responsive to the Committee's subpoena.
- No one told them there was a legal hold order in place and not to destroy the back-up tapes.
- No one told them there were a number of investigations open by Congress, the IG, and the Justice Department and that all potentially responsive emails should be preserved.

Despite a huge gap in the collection of Lois Lerner's emails, on March 26, Mr. Koskinen appeared before the Oversight Committee and promised to produce all of Lois Lerner's emails.

- He made no mention of the missing emails during his testimony.
- He assured us the IRS would produce all of Lois Lerner's emails.
- He openly misled our Committee.

It wasn't until June 13, 2014 that Mr. Koskinen sent a letter to the Senate Finance Committee acknowledging Lois Lerner's hard drive had crashed and emails were missing.

That admission was buried in an attachment to the letter.

But on June 20, 2014 Mr. Koskinen testified before the Ways and Means Committee stating "since the start of this investigation, every email has been preserved. Nothing has been lost. Nothing has been destroyed."

He asserted the agency had gone to "great lengths" to restore Lois Lerner's emails.

Nothing could be further from the truth.

The IRS didn't even bother to look for the Lois Lerner emails in some very obvious places.

- When TIGTA opened its investigation into the destruction of the tapes, it took them only **15 days** to find 744 back-up tapes that contained some of Lois Lerner's emails.
- These tapes were located at the IRS facility in Martinsburg and attendants at the facility confirmed **no one had ever asked for the tapes**, but they'd been there all along.

Nor did the "great lengths" Mr. Koskinen described include looking in other obvious places.

- In its investigation, TIGTA found the IRS failed to look in **five of the six total places** where Lois Lerner emails could have existed, including the backup tapes, her blackberry, the server, the back-up server, and the loaner laptop.
- In searching those items, TIGTA was able to locate around 1,000 additional unique Lois Lerner emails.
- When asked why the IRS hadn't turned over those emails, TIGTA testified before our Committee the agency "simply hadn't looked for them."

Mr. Koskinen received a subpoena from OGR and did nothing to ensure full compliance with it.

Yet, at the same time, he testified numerous times before Congress that his agency was going to "great lengths" to comply with the subpoena and locate the missing Lois Lerner emails.

Congress cannot allow the head of one of the most powerful agencies to shirk his legal obligation to comply with a subpoena.

Despite all this, the environment for targeting at the IRS still exists.

Last July, the Government Accountability Office found **nothing** had been done at the agency to make sure the targeting of certain beliefs wouldn't happen again.

- Specifically, GAO determined “the control deficiencies GAO found increase the risk that [the Exempt Organizations unit] could select organizations for examinations in an unfair manner – for example, based on an organization’s religious, educational, political, or other views.”¹
- So nothing has changed; Americans can still expect to be targeted by the IRS for their beliefs.

Mr. Koskinen was sent to the IRS to clean it up, but it’s gotten worse.

As members of Congress we have no reason to have any confidence that Mr. Koskinen will run one of the most powerful agencies with any integrity.

Nor can the American people feel confident the agency won’t misuse its power under his direction.

For these reasons, it is time for Congress to act and remove him as head of the agency.

¹ Government Accountability Office, *IRS Examination Selection: Internal Controls for Exempt Organization Selection Should be Strengthened*, July 2015.

Mr. GOODLATTE. The Chair thanks the Chairman of the Oversight and Government Reform Committee and is now pleased to recognize and welcome Congressman DeSantis.

TESTIMONY OF THE HONORABLE RON DeSANTIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. DeSANTIS. Thank you, Mr. Chairman, Ranking Member Conyers, my colleagues on the Committee.

Although I didn't know it at the time, the first exposure I had to the IRS targeting scandal occurred long before that day in May 2013 when Lois Lerner publicly revealed the existence of improper targeting by the IRS. That she did this by infamously planting a question at a legal conference in order to preempt the forthcoming IG report was a clear indication that the IRS had improperly treated American citizens who were doing nothing more than seeking to exercise their First Amendment rights.

Once this news broke, I immediately thought back to the previous year. I was not a Member of this body. I was running for office for the first time. And, as is customary in campaigns, I made a point to speak to as many groups as I could find.

In one instance, the leaders of one group dedicated to educating their fellow Americans on the virtues of constitutional government grew apprehensive when I showed up and requested to speak. As a candidate for office, they explained my speaking before the group could cause them problems with the IRS, an agency that they felt had mistreated their group by refusing to grant them tax-exempt status.

I was in disbelief. It seemed to me that these folks were being paranoid. Why would the IRS care about a small group seeking tax-exempt status? Turned out my reaction was wrong and there was good reason to be concerned about the behavior of the IRS. And I've always thought about that as we've done this investigation.

As a Member of the Oversight Committee, I join my colleagues in seeking to ascertain the truth about the conduct of the IRS and its employees like Lois Lerner.

Chairman Chaffetz has done a good job outlining the extent to which the IRS, under Commissioner Koskinen, has stonewalled and obstructed attempts by Congress to find out the truth about the conduct of the IRS.

Koskinen pledged to be transparent and to alert Congress and the American people about problems with the investigation as soon as he knew about them. Yet he failed to alert the Congress about the gap discovered in Lerner's emails for 4 months.

Koskinen testified that every email had been preserved since the start of the investigation. Yet the IRS destroyed over 400 backup tapes containing as many as 24,000 of Lois Lerner's emails in March of 2014. These emails, of course, were the subject of an internal preservation order and two congressional subpoenas.

Koskinen testified that the backup tapes from 2011 had been recycled pursuant to normal IRS policy. Yet the 400 backup tapes weren't destroyed until March of 2014. And, moreover, the Inspector General was able, by doing a cursory investigation, to identify some backup tapes that had not been recycled.

Koskinen testified that the IRS had gone to great lengths to make sure that all emails were produced. But, as the Chairman pointed out, it failed to even look at Lerner's mobile device, the email server, backup server, loaner laptop, and IRS backup tapes, all of which were examined by the Inspector General.

So, in this matter, there is really no dispute about the facts. The IRS destroyed up to 24,000 of Lois Lerner's emails under 2 subpoenas. Commissioner Koskinen made several statements in testimony before Congress that are false. And the IRS failed to produce all of the emails it had in its possession, as well as failing to do basic due diligence by not looking in obvious places for Lerner's emails. This is cut-and-dry.

So this sorry train of false statements and dereliction of duty represents an affront to the authority of this House. The American people had a right to get the facts regarding the IRS targeting, and the IRS had a duty to comply with the congressional investigation. Instead, the IRS stonewalled us. Thousands of email have been destroyed. The American people may very well never get the entire truth as it relates to this scandal.

Now, it would be unthinkable for a taxpayer to treat an IRS audit the way the IRS has treated the congressional investigation. If a taxpayer destroyed documents subject to a summons by the IRS, the taxpayer would be in a world of hurt. If the taxpayer made false statements to the IRS in response to an investigation, it's safe to say that the taxpayer would not get away with it. If a taxpayer shirked basic compliance with an IRS investigation, it's a good bet that the investigation would not simply end.

So the question is, is it acceptable for the head of one of the most powerful agencies in government to operate under a lower standard of conduct than that which is applied to the taxpayers the Commissioner is charged with auditing? I have no doubt that American taxpayers find such an arrangement to be unacceptable. Surely this House should also find it unacceptable.

As of today, not a single individual has been held accountable in any way for what happened with the IRS. If Commissioner Koskinen can get away with this conduct, then other executive branch agencies will have a blueprint of how to stymie the Congress when it conducts legitimate oversight. This will further erode the power of the Congress, which is arguably at its historical nadir.

The Constitution contains mechanisms for self-defense that can be used to check abuses by civil officers in the executive branch. We in this body should use them. It's a matter of fairness for the American people, accountability for the executive branch, and self-respect for this institution.

I thank the Chairman for the time.

[The prepared statement of Mr. DeSantis follows:]

Written Statement
Ron DeSantis
United States Representative, Florida, Sixth Congressional District
“Examining the Allegations of Misconduct Against IRS Commissioner John Koskinen,
Part I”
Committee on the Judiciary
United States House of Representatives
May 24th, 2016

The first exposure I had to the IRS targeting scandal occurred long before that day in May 2013 when Lois Lerner publicly revealed the existence of improper targeting by the IRS. That she did this by infamously planting a question at a legal conference in order to preempt a forthcoming TIGTA report was a clear indication that the IRS had improperly treated American citizens who were doing nothing more than seeking to exercise their first amendment rights.

Once this news broke, I immediately thought back to the previous year -- I was running for office for the first time and, as is customary in campaigns, I made a point to speak before as many groups as I could find. In one instance, the leaders of a group dedicated to educating fellow Americans on the virtues of constitutional government grew apprehensive when I showed up and requested to speak. As a candidate for office, they explained, my speaking before the group could cause them problems with the IRS, an agency that they felt had mistreated their group by refusing to grant them tax-exempt status.

I was in disbelief. It seemed to me that these folks were being paranoid. Why would the IRS care about a small group seeking tax-exempt status?

It turned out, my reaction was wrong and there was good reason to be concerned about the behavior of the IRS.

As a member of the Oversight Committee, I joined my colleagues in seeking to ascertain the truth about the conduct of the IRS and its employees like Lois Lerner. Chairman Chaffetz has done a good job of outlining the extent to which the IRS, under Commissioner John Koskinen, has stonewalled and obstructed attempts by the Congress to find out the truth about the conduct of the IRS:

- Koskinen pledged to be transparent and to alert the Congress and the American people about problems with the investigation as soon as he knew about them, yet he failed to alert the Congress about the gap discovered in Lois Lerner's emails for four months.
- Koskinen testified that every email had been preserved since the start of the investigation, yet the IRS destroyed over 400 backup tapes containing as many as 24,000 of Lois Lerner's emails in March of 2014. These emails were the subject of an internal preservation order and two congressional subpoenas.
- Koskinen testified that the backup tapes from 2011 had been recycled pursuant to normal IRS policy, yet the 400 backup tapes weren't destroyed until March of 2014. Moreover,

the inspector general was able, by doing a basic investigation, to identify some backup tapes that had not been recycled.

- Koskinen testified that the IRS had gone through "great lengths" to make sure that all emails were produced, yet it failed to even look at Lerner's mobile devices, the email server, the backup email server, the loaner laptop, and the IRS backup tapes -- all of which were examined by the inspector general.

In this matter there really is no dispute about the facts: the IRS destroyed up to 24,000 of Lois Lerner's emails under two congressional subpoenas, Commissioner Koskinen made several statements in testimony before the Congress that are false, the IRS failed to produce all of the emails it had in its possession, and the IRS failed to do basic due diligence by not looking in obvious places for Lerner's emails. This is cut and dry.

This sorry train of false statements and dereliction of duty represents an affront to the authority of this house. The American people had a right to get the facts regarding IRS targeting, and the IRS had a duty to comply with the congressional investigation. Instead, the IRS stonewalled. As thousands of emails have been destroyed, the American people may very well never get the entire truth as it relates to this scandal.

It would be unthinkable for a taxpayer to treat an IRS audit the way that the IRS has treated the congressional investigation. If a taxpayer destroyed documents subject to a summons by the IRS, the taxpayer would be in a world of hurt. If a taxpayer made demonstrably false statements to the IRS in response to an investigation, it is safe to say that the taxpayer would not get away with it. If the taxpayer shirked basic compliance with an IRS investigation, it's a good bet that the investigation would not simply end.

So the question is: is it acceptable for the head of one of the powerful agencies in government to operate under a lower standard of acceptable conduct than that which is applied to the taxpayers the Commissioner is charged with auditing?

I have no doubt that American taxpayers find such an arrangement to be intolerable.

Surely, this House should find it intolerable. As of today, not a single individual has been held accountable in any real way for what happened with the IRS. If Commissioner Koskinen can get away with his conduct, then other executive branch agencies will have a blue print for how to stymie the Congress when it conducts legitimate oversight. This will further erode the power of the Congress, which is arguably at its historical nadir.

The Constitution contains mechanisms for self-defense that can be used to check abuses by civil officers in the executive branch. We in this body should use them. This is a matter of fairness for the American people, accountability for the executive branch, and self-respect for this institution.

Mr. GOODLATTE. The Chair thanks the gentleman.

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

The report of the investigation by the Treasury Inspector General for Tax Administration, or TIGTA, concluded in its 2015 report as follows, and I quote: "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."

Now, my understanding is that Commissioner Koskinen was brought in, appointed Commissioner for the purpose of restoring the credibility of the IRS following this horrific scandal, and that part of restoring that credibility would be coming clean, making sure that the investigations conducted by various Committees here in the House of Representatives were responded to appropriately with the information that they requested, and that, in doing so, one would follow all the chains of evidence within one's organization that he is now the head of to find where that might go and then send people there and say, "What do you have?" Because, according to the evidence that you've brought forward today, that was never done.

So I would like to hear from each of you your understanding of to what extent Commissioner Koskinen is responsible for the management of the IRS and for this management failure.

Mr. CHAFFETZ. Thank you.

He has the duty and obligation, a legal obligation, under a subpoena to comply with that subpoena and do everything he can in his power to make sure that he's doing that. He testified in multiple Committees and multiple times, in addition to, I believe, letters, saying that he was making every effort, that he had spent \$18 million dollars.

Mr. GOODLATTE. Did he ever break that down for you? I saw those statements as part of the video. Did he ever say, "And I did this and I did this and I did this, and we spent this money for this and this and this"?

Mr. CHAFFETZ. We can find—nor can TIGTA, based on the report—find no proactive evidence that the Commissioner did anything proactively to actually recover those tapes from the source of which they were destroyed.

It took the Inspector—I guess the comparison is the Inspector General. The Inspector General, it took him, start to finish, 15 days to go find them, and the Commissioner had years and millions of dollars of resource and didn't even ask at the basic sources.

Mr. GOODLATTE. Mr. DeSantis?

Mr. DESANTIS. What really does it for me is you had these backup tapes in West Virginia, and the Inspector General testified about what he did. He got in his car, and he drove to West Virginia, and he asked for the backup tapes.

So when you start talking about spending \$18 million, what does it cost for gas to get to West Virginia and back? Fifty bucks? Sixty bucks? And he goes there and he's able to recover some of the tapes. Now, of course, others were destroyed.

But the people at the backup tape facility said the IRS never even requested any of the backup tapes. And so I think that that says a lot about his leadership, and I think it shows—it undercuts his claim that they went to great lengths to get the information.

Mr. GOODLATTE. And, very specifically, with regard to that very facility, to further quote from the TIGTA report, “Although they existed until March 4, 2014, the backup tapes containing Lerner’s emails were destroyed because IRS employees who shipped the backup tapes and server hard drives did not understand their responsibility to comply with the Chief Technology Officer’s May 2013 email directive to preserve electronic backup media, and the Martinsburg employees who destroyed the backup tapes on March 4, 2014, misinterpreted the directive.”

As you understand it, who was responsible for making sure IRS employees understood that May 2013 directive?

Mr. CHAFFETZ. The Commissioner of the IRS. That’s who we issued the subpoena to.

Mr. GOODLATTE. Mr. DeSantis?

Mr. DESANTIS. I concur.

Mr. GOODLATTE. Thank you very much, both of you.

I now recognize the gentleman from Michigan, Mr. Conyers, for his questions.

Mr. CONYERS. May I thank my two colleagues for their testimony and their concern about this matter.

But is there any way, Mr. Chaffetz, that we could determine who was on the tape that you asked and received consent to play for 10 minutes?

Mr. CHAFFETZ. I’m sorry, the question is who was on the tape?

Mr. CONYERS. Yeah, who was the woman on the tape that was interpreting it? Can you tell us anything about—

Mr. CHAFFETZ. Oh. She’s a staff member for the Oversight and Government Reform Committee. You mean the voiceover?

Mr. CONYERS. Yes.

Mr. CHAFFETZ. Yes. She was a staff person for the Oversight Committee.

Mr. CONYERS. Uh-huh. Well, I didn’t know that before just now. And I’m sorry I didn’t—I don’t want to raise any more objections than have already been raised here this morning, but it seemed a little bit unusual that this was a tape—that you didn’t identify who it was before it started playing.

So what I’m concerned with is, are we talking about issues in IRS—which is under the usual criticism and, in these recent circumstances, even more than the normal criticism that they usually receive—are we talking about we don’t like the way they’re doing business and we think that they made some mistakes and that they may have made even misstatements—or the present Commissioner—have made statements that we should be questioning or challenging, as we normally do in this Committee?

And that seems to me to be the gist of the comments that I’ve received from my two learned colleagues on the Committee that have testified here today. “We don’t like what happened.”

Mr. CHAFFETZ. Can I—

Mr. CONYERS. Sure.

Mr. CHAFFETZ [continuing]. Put some color on that a little bit?

Mr. CONYERS. Please do.

Mr. CHAFFETZ. The first part, it's important to understand the context of why these emails are so important. Because the targeting of Americans, the suppression of their First Amendment rights is something I know in a bipartisan way we take very seriously.

The facts before us on the impeachment go solely to what Mr. Koskinen did and did not do when he was under subpoena. And he provided—there was a lot of gross negligence. There were things that he should've done that he could've done. But he also—

Mr. CONYERS. But is gross negligence an impeachable offense?

Mr. CHAFFETZ. I think that is part of it, yes. Yes, I do. In fact, in 1974, the House Judiciary Committee came up with a report, and it talked about the standard by which an impeachable offense should be held. And I happen to concur with that.

Mr. CONYERS. Well, I may too. I haven't recalled it. But I was there for that, and it—

Mr. GOODLATTE. You're the only one.

Mr. CONYERS. That's right. And I want to make—

Mr. CHAFFETZ. I was 7. I was playing soccer.

Mr. CONYERS. Uh-huh. Well, you're excused for not knowing about it until much later.

But the whole idea that 19 impeachment hearings have been held in almost a couple hundred years, is this being a little heavy-handed about this matter?

I mean, I probably disagree with some of the IRS Commissioner's views and conduct themselves, but we're examining the allegations of misconduct against the IRS Commissioner, and I feel that if we're talking about another hearing on this same subject, it seems to me a little bit overbroad. And I think that we ought to move a little bit more carefully on this.

I'm going to have to examine all of the statements made here today. And it seems to me that we really ought to move with a little more discretion. There have been statements of hearsay, of allegations, that whether they are provable or not I just don't know and I'm trying to find out. And, of course, I give you the benefit of doubt because of your passion and the great work you've done on it since you were 7 in this area.

Do you see what I'm describing?

Mr. CHAFFETZ. I can understand and respect that we may disagree on the remedy, but I think what we would find is that, in fact, we were lied to in Congress, we were misled in Congress, that there was gross negligence, that there was a duty and obligation that the IRS, as much as anybody, when they issue 60,000 subpoenas and summons per year, they know how this works. And that, I think we can come to an agreement to.

Mr. CONYERS. Yeah. Well, I agree with you that we ought to look at these much more carefully, but it's sort of hard, at this point, for me to accept them or say that they're probably right or that mistakes were made. And I'm sure that they were made. But there seems to be an anti-IRS Commissioner environment here that makes it very difficult for me to go forward without an investigation of all that's been said this morning.

And I thank the gentleman.

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

Mr. ISSA. Thank you, Mr. Chairman.

Chairman Chaffetz, do you remember the April 7, 2014, staff report?

Mr. CHAFFETZ. Yes.

Mr. ISSA. I'd ask that that be placed in the record.**

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

Mr. ISSA. Thank you.

April 7, 2014, extensive documentation about the cover—the not coverup but what we had already discovered. And then June 20, 2014: “Since the start of this investigation, every email has been preserved.” Now, that’s a quote under oath by the Commissioner, correct?

Mr. CHAFFETZ. Yes.

Mr. ISSA. I want to—you know, you and I are not lawyers, so we’ll tax each other a little bit on a constitutional question. According to Wikipedia, at least, the definition of high crimes and misdemeanor constitutionally says it covers allegations of misconduct, particularly of officials, such as perjury of oath, abuse of authority, bribery, intimidation, misuse of assets, failure to supervise, dereliction of duty, conduct unbecoming, refusal to obey a lawful order/subpoena.

So I just want to go through the last several there. Is it your understanding that high crimes and misdemeanors include failure to supervise?

Mr. CHAFFETZ. Yes.

Mr. ISSA. Dereliction of duty?

Mr. CHAFFETZ. Yes.

Mr. ISSA. Conduct unbecoming?

Mr. CHAFFETZ. Yes.

Mr. ISSA. Refusal to obey a lawful order?

Mr. CHAFFETZ. Yes.

Mr. ISSA. Under both your chairmanship and my chairmanship, did we issue subpoenas that were, in fact, not obeyed?

Mr. CHAFFETZ. Yes. August of 2013 and February 14 of 2014.

Mr. ISSA. Just before leaving office, I issued a December 23, 2014, staff report. Do you remember that one?

Mr. CHAFFETZ. Yes.

Mr. ISSA. I'd ask that that be placed in the record.***

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

Mr. ISSA. At that time, hadn't we as a Committee already recognized that there had been failure to preserve—in other words, failure to obey the subpoena, a lawful order? Hadn't we already determined that there had been conduct unbecoming by Lois Lerner? Hadn't we already figured that the Commissioner and his political-

**Note: The report referred to is not printed in this hearing record but is on file with the Committee and is available at:

<http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104980>

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appointed subordinates had failed to supervise and were guilty of dereliction of duty?

Mr. CHAFFETZ. Yes.

Mr. ISSA. And in July, I believe, of last year, didn't you call on the Commissioner to resign?

Mr. CHAFFETZ. Yes.

Mr. ISSA. And the Ranking Member very aptly mentioned that we've only had 19 impeachments in the history of this great Republic and that he had participated in many of them. But the history of impeachment—haven't we threatened impeachment or called on the resignation of Cabinet and sub-Cabinet officers hundreds and hundreds of times and on judges hundreds and hundreds of times, and haven't they, in the ordinary course, either quit or been fired by the President?

Mr. CHAFFETZ. Yes. That's happened many times.

Mr. ISSA. So you're here today because, almost a year ago, after multiple very lengthy documents, after millions of dollars and countless thousands of hours, you had determined that, one, they had targeted conservatives for their belief at the IRS, that the Commissioner had come in and that he had been guilty of failure to properly supervise, given us false statements that either he knew were false or he was too lazy and too negligent to, in fact, verify.

Mr. CHAFFETZ. Yes.

Mr. ISSA. So, if I understand correctly, you're here because you've exhausted other remedies.

Mr. CHAFFETZ. Providing false testimony is to Congress—and rather than Congress continuing to whine and complain about the lack of inaction in the executive branch, the Founders gave us tools, and they gave us tools to defend ourselves and take care of ourselves and to provide a consequence.

Mr. ISSA. Mr. Chairman, are you familiar with the criminal referral by the Ways and Means Committee—

Mr. CHAFFETZ. Yes.

Mr. ISSA [continuing]. Against Lois Lerner?

Mr. CHAFFETZ. Yes.

Mr. ISSA. And under that, as I understand, the law said that the U.S. attorney for the District of Columbia shall present to a grand jury those criminal articles against Lois Lerner. What happened to those?

Mr. CHAFFETZ. There was no criminal referral. After 10 months of review, they decided not to present those to the grand jury.

Mr. ISSA. So even though the Ways and Means Committee under a statute had delivered a document that ordered the U.S. attorney to perform an act, under this Justice Department of this President, they chose to not obey that law. Isn't that correct?

Mr. CHAFFETZ. That's my understanding.

Mr. ISSA. So if you were to do similarly and refer the IRS Commissioner specifically for his false statements and if you found it for criminal purposes, you would expect the same thing to happen, that it would not be presented?

Mr. CHAFFETZ. Perhaps. And different Members have different views on this. I look at this as the remedy that the Founders gave

us. It hasn't been exercised in a while, but that is the tool that they gave us.

Mr. ISSA. And you're here today just after the General Accountability Office, a nonpartisan part of Congress, found that conservative groups are still being targeted as we speak. Is that correct?

Mr. CHAFFETZ. That is correct. In fact, they said, "could select organizations for examinations in an unfair manner." And it goes on to say, "based on an organization's religious, educational, political, and other views."

Commissioner Koskinen has not resolved that problem. It continues today. And based on his most latest comments, he doesn't think he's misspoken in any way, shape, or form.

Mr. ISSA. So you're here today because you've exhausted other remedies and because the remedy for someone who has lost the confidence of the Congress, lost the confidence of the American people, failed to fix the problem after more than 2 years, or, if you will, failure to supervise, dereliction of duty, conduct unbecoming, and a refusal to obey lawful orders—that's why you're here, isn't it?

Mr. CHAFFETZ. It is.

It's important to note that most Members erroneously believe that when President Obama steps down and we get a new President that the Commissioner would naturally do that as well. That's not true. When he was confirmed in December of 2013, his being the Commissioner continues until November of 2017.

So the remedy is, I think, urgent. We have 90,000 good, hard-working people at the IRS, but they are mismanaged, and they are being led by somebody who is lying to Congress.

Mr. ISSA. Final question. Kate Duval discovered on Super Bowl Sunday, more than a month before the tapes were destroyed—

Mr. CHAFFETZ. Right.

Mr. ISSA [continuing]. That they had this gap. Was she a nonconfirmed but a political appointee, an appointee directly of this Commissioner?

Mr. CHAFFETZ. Yes, she was.

Mr. ISSA. Thank you.

I thank the Chairman and 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 my colleagues for their presentation and their service to this Nation. I hold the responsibilities, however, of the Judiciary Committee sacrosanct and of a great moment and great responsibility. We are the protectors of the Constitution. And as the authority given to us, this House, as a House having the sole authority to impeach, though I note very clearly that this is not an impeachment hearing, I take the responsibility very seriously.

To Mr. Conyers, let me say that I associate myself with your line of reasoning, and I promise not to hold your wisdom and experience and legal scholarship against you. So I thank you so very much for all that you have offered to us.

Bad behavior, inappropriate answering of questions, to my very fine witnesses, may be grounds for being in contempt of Congress and any other admonition that we'd want to give.

I hold to two points that you've made. And that is that there must be a relationship between witnesses from the Administration, no matter which Administration it is, and Congress of forthrightness. I also hold to the point that the First Amendment, freedom of speech and thought, are, again, very high callings of this Nation, probably why so many have tried to immigrate to this Nation, because of the freedoms that we give. But I also think it's the responsibility of Congress to be factual and temperate.

So let me read this letter to you coming from the Department of Justice recently. And that is, "In collaboration with the FBI and Treasury Inspector General for Tax Administration, the Department's Criminal and Civil Rights Division conducted an exhaustive probe." By the way, there was \$20 million spent, 160,000 hours of staff work. "We conducted more than 100 witness interviews"—that was by the IRS—"collected more than 1 million pages of IRS documents, analyzed almost 500 tax-exemption applications, examined the role and potential culpability of scores of IRS employees, and considered the applicability of civil rights tax administration obstruction statutes. Our investigation uncovered substantial evidence of mismanagement, poor judgment, and institutional inertia, leading to the belief by many tax-exempt applicants that the IRS targeted them based on their political viewpoints. But poor management is not a crime. We found no evidence that any IRS official acted based on political, discriminatory, corrupt, or other inappropriate motives that would support a criminal prosecution. We also found no evidence that any official involved in the handling of a tax-exempt application or IRS leadership attempted to obstruct justice. Based on the evidence developed in this investigation, the recommendation of the experienced career prosecutors and supervising attorneys at the Department of Justice, we are closing our investigation and will not seek any criminal charges."

I realize that is not impeachment, but let me just say this, Mr. Chaffetz, if I could ask. "No evidence was uncovered that any IRS employees had been directed to destroy or hide information from Congress, the DOJ, or TIGTA." Do you want to quarrel with that extensive investigation?

Mr. CHAFFETZ. I think you're conflating two different topics. What we are most concerned about is Mr. Koskinen's actions under the subpoena. That is not what the—that is not what the FBI—

Ms. JACKSON LEE. But the premise of the actions are dealing with the whole litany of issues. I looked at the 10-minute presentation. You had Ms. Lerner, you had all of that.

Just answer "yes" or "no." The premise is, of course, all the information and charges made about discriminating against conservative groups, are they not?

Mr. CHAFFETZ. The underlying concern and need for the investigation in the documents—

Ms. JACKSON LEE. Came about through all of that.

Mr. CHAFFETZ. Yes.

Ms. JACKSON LEE. Right. And so the basis of which the TIGTA and DOJ investigators, they found no evidence to suggest any crime. And so, in respect to the Commissioner, then his answers cannot be part of a crime if they found no basis for such crime. And if he's answering as best of his knowledge, then he cannot be at-

tributable—maybe bad behavior, but he cannot be attributable to an impeachable offense.

Let me also raise this question. Mr. Issa asked you—

Mr. CHAFFETZ. I would disagree with that, by the way.

Ms. JACKSON LEE. And that's why we have that right of disagreement. And this is the impeachment Committee.

Mr. Issa asked you if we had threatened the impeachment of judges and Cabinet officers hundreds and hundreds of times. You said yes. If that turns out to be untrue, have you given us, yourself, false testimony and should you be removed from office?

Mr. CHAFFETZ. Well, I hope I've given everything as accurate, but if I find that there is something inaccurate, I have a duty and obligation as swiftly as possible to correct the record. And in this case with Mr. Koskinen, he still stands by all those statements I've showed you. He doesn't believe he's made any misstatement to date. And I think that's the difference.

Ms. JACKSON LEE. I respect your work. I respect you. And I respect Mr. DeSantis as well. I don't want to see any single group, conservative or otherwise, be discriminated against.

As we review these materials, I believe, even though this is not an impeachment proceeding, there are no impeachable offenses according to as we have defined them and in the Madison Papers.

But I'd also say that Mr.—the IRS Commissioner, there is no definitive proof about him being connected to the underlying premise. And, to the best of his ability, all of the materials that we have, including—even though the DOJ did not point us directly to the subpoena, suggests that he answered it as effectively and truthfully as he can.

Mr. ISSA. Will the gentlelady yield?

Ms. JACKSON LEE. I'd be happy to yield.

Mr. GOODLATTE. The time of the gentlewoman has expired. Without objection, the gentlewoman is recognized for an additional minute so she can yield to the gentleman from California.

Mr. ISSA. I thank both of you.

In the case of the Scooter Libby conviction, my understanding is he was alleged to have given an untruthful statement about what ultimately was not determined to be a crime. He had no part in revealing the Valerie Plame identity. And yet he still was disbarred and criminally indicted.

So my understanding is false testimony or dereliction of duty is still impeachable, whether or not the Justice Department determines there is a crime. I think Mr. Conyers would confirm that that's not—I don't believe that that's a question before us, as to the Commissioner's possibility of being found to have failed to meet his obligations, which is the allegation that underlies the Chairman.

I yield back.

Ms. JACKSON LEE. If I may, just in the moment's time left over, Scooter Libby had personal knowledge of the facts, the underlying facts. This is the point that I was making. I do not see any proof here, including the 10-minute presentation, to suggest that Commissioner Koskinen had any personal knowledge of the facts and the occurrences. To the best of his ability, being the Commissioner, he directed 160,000 hours, \$20 million, and could not find—or pre-

sented what he could find and represented that he presented what he could find.

And, previously, the DOJ and the Treasury Inspector General found nothing that said that the IRS was discriminating against conservative groups and liberal groups. I stand with the President, which says, if it was being done, then clean it up. But—

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

Ms. JACKSON LEE [continuing]. The Commissioner is not impeachable at this time.

I yield back.

Mr. GOODLATTE. The Chair recognizes the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman.

I thank the witnesses for not only your testimony but your deep and diligent due effort on here on this, and also Chairman Issa, in leading on this.

This goes so deep, as I listen to this testimony here today, and try to make sense of this timeline. But I'd like to back up a little bit and ask you, Chairman Chaffetz, what was the first date that the public became aware or you became aware that there was a problem with the IRS potentially targeting conservative organizations?

Mr. CHAFFETZ. I think that goes back to 2011, if I recall, Dave Camp and the Ways and Means Committee.

Mr. KING. That would be the first formal, with his letter to the IRS. But it must have been in the public eye prior to that. Are we working with a date that's probably a half a year ahead of that period of time?

Mr. CHAFFETZ. I don't recall when the first complaints started to come in, but there were groups that were complaining that their applications were being held for unknown reasons.

Mr. KING. And this was under then-IRS Commissioner Doug Shulman?

Mr. CHAFFETZ. There have been a couple of different IRS Commissioners through this process, yes.

Mr. KING. And so I would turn to this. The tapes were destroyed. Do we know the exact date that they were destroyed?

Mr. CHAFFETZ. Yes, we do. I believe it was March 4, if I recall, of 2014.

Mr. KING. Okay. March 4, 2014. If we know the exact date, then do we know the name of the individual that physically destroyed them?

Mr. CHAFFETZ. The Inspector General did interview some people who worked there. I don't have that name at my fingertips, but it is, I believe, in the TIGTA report. I'd have to confirm that, but they did—we're relying on the Inspector General, who interviewed these people.

Mr. KING. But we think that we do know the name of that individual, the Inspector General knows the name of that individual.

Would you have any knowledge as to whether Commissioner Koskinen had confronted that individual to ascertain that truth, as you would if you were a manager?

Mr. CHAFFETZ. I believe the Inspector General testified, as I recall, that he saw no evidence that there was any attempt or com-

munication with them to confirm the existence of these tapes. And, again, the Inspector General found them in 15 days.

Mr. KING. And so we're dealing with, among other allegations here, perjury and obstruction of justice. And I would ask if you've speculated as to why one would leave themselves vulnerable for such charges. What could be, let's say, more imposing than such charges? And either witness I'd be happy to hear.

Mr. CHAFFETZ. It's hard to understand nor can I definitively identify the motive. But I also think there is an underlying belief in the executive branch that the legislative branch isn't going to stand up for itself. I think that permeates far beyond this. I think they know they can run out the clock, they can provide or not provide, and just ignore. I mean, for this hearing here today, the IRS Commissioner was invited to testify and he just said no.

Mr. KING. I just believe it would be completely possible to impeach him without inviting him back again, and I would just encourage that. And if he were to invite himself, we should consider his request.

Mr. DeSantis, do you have something to add to this that I've left out?

Mr. DESANTIS. Well, I just think that it's frustrating because if a taxpayer treated the IRS the way the IRS has treated the Congress that just wouldn't fly. I think we all know that. I think you can talk to people who've had dealings with the IRS in the private sector, and they laugh when you say, you know, could you just allow evidence to be destroyed that was the subject of a summons? Or, you know, what if you made false statements, is that fine? Or what if they asked you to do certain things and you just decided not to do it? And I've yet to find somebody who thinks that would be acceptable.

Mr. KING. Okay. But are we addressing here the real central point? Because I think there's another point, and I think it is that there must have been a motive. If the IRS comes to me and insists that they have my documents, then I'm going to provide them because it's easier to do so than it is to face the wrath of the IRS, as each of you have testified. But when you're appointed to clean up the agency of the IRS as their Commissioner, you know there's a problem that you've inherited. And there's 24,000 missing emails in that.

Is it possible that those emails could trace back and thread to the highest reaches of government at the most famous address in the United States of America perhaps?

Mr. CHAFFETZ. I've seen no evidence of that. But I will tell you that, if you look at what happened with Lois Lerner, she pled the Fifth. That's her constitutional right, and I respect that. But you can also see correspondence where it was "perfect" that they couldn't search her text messages. And, you know, within days of the Dave Camp letter going to the IRS, her hard drive crashed. I mean, what a coincidence.

But I have seen no direct evidence that I can point to, nor is it central to the impeachment resolution, which goes directly to what Mr. Koskinen did and did not do under a subpoena and his testimony before Congress.

Mr. KING. And, in brief conclusion, what's the statute of limitations on these charges that have been chronicled here?

Mr. CHAFFETZ. I have no idea.

Mr. KING. Thank you, witnesses.

Thank you, Mr. Chairman. I yield back the balance of my time.

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

Mr. JOHNSON. Thank you, Mr. Chairman.

I found the video to be very artistic and——

Mr. CHAFFETZ. Well, thank you. I take that as a huge compliment. Thank you.

Mr. JOHNSON [continuing]. Almost——

Mr. CHAFFETZ. Our staff will be most pleased to hear that.

Mr. JOHNSON.—I would say it was professionally produced. What staffer was it that was responsible for the production of this video?

Mr. CHAFFETZ. I'll get you the names. But we have a number of people on our staff, and you can come with me and I'll show you and I'll introduce them to you myself.

Mr. JOHNSON. Who was primarily responsible for the production of that video?

Mr. CHAFFETZ. Well, Rebecca Edgar is the head of the communications group. We have M.J. Henshaw, who's very involved. We have Alex, we have Ashton, we've got a number of people. And right after this hearing, if you want, I'll walk back and introduce them to you.

Mr. JOHNSON. Okay. And those names that you just mentioned, all of those people are on congressional staff. Is that correct?

Mr. CHAFFETZ. If the question is did we produce it internally, yes.

Mr. JOHNSON. No, my question is, all of the people who you just named are on congressional staff?

Mr. CHAFFETZ. Yes.

Mr. JOHNSON. And they were the ones responsible for——

Mr. CHAFFETZ. Yes. I believe there's one person who worked on it who no longer works for Congress, but when he worked on it, he did work for Congress.

Mr. JOHNSON. Did anybody work on that video who was not a member of congressional staff?

Mr. CHAFFETZ. I don't believe so. I don't believe so. The voiceover was Alex, and I'll introduce you to her if you'd like.

Mr. JOHNSON. Okay. And was that video produced by those congressional employees while they were on congressional time or——

Mr. CHAFFETZ. Yes. Oh, absolutely.

Mr. JOHNSON. Okay. Was any of it produced outside of congressional time?

Mr. CHAFFETZ. I don't believe so.

Mr. JOHNSON. And what equipment was used to produce that video?

Mr. CHAFFETZ. We have a lot of Apple products, and I can show them to you. I can't name them off the top of my head.

Mr. JOHNSON. Were they all congressionally owned——

Mr. CHAFFETZ. Yes.

Mr. JOHNSON [continuing]. Equipment?

Mr. CHAFFETZ. Yeah.

Mr. JOHNSON. And how has that video been used outside of Congress?

Mr. CHAFFETZ. We have made it public a few months ago. It's available on our Web site. We've tweeted it out, Facebook, Instagram. It's out there pretty far and wide. We have about just over 9,000 hits on it.

Mr. JOHNSON. And all of that is on congressional social media. Is that correct?

Mr. CHAFFETZ. I believe so. I mean, I'd like to get it out there more. I'm glad you're talking about it. Go to oversight.house.gov and go see it yourself.

Mr. JOHNSON. Has the video, under the direction of congressional employees, ever been used for a noncongressional purpose, to your knowledge?

Mr. CHAFFETZ. I couldn't testify about that. I have no—I mean, once it's out there in the public and on the Web site, there are untold number of people that can cite that link and—

Mr. JOHNSON. Was any of the footage that was edited and used in this production derived from congressional sources? Or was it solely noncongressional sources that the—

Mr. CHAFFETZ. Well, there are clips, for instance, at the beginning—

Mr. JOHNSON. Yeah.

Mr. CHAFFETZ [continuing]. Of news media.

Mr. JOHNSON. Uh-huh. Those were obviously not congressional video.

Mr. CHAFFETZ. Correct.

Mr. JOHNSON. But were there any video that was used—or were there any clips of congressional video that was used in the production of this video that we saw today?

Mr. CHAFFETZ. I'd have to go look. I mean, there are an awful lot of clips in there. But I would have to go look.

Mr. JOHNSON. Okay.

Now, let me ask you this question. The Senate Finance Committee investigated this IRS issue, correct?

Mr. CHAFFETZ. Yeah.

Mr. JOHNSON. And the Treasury Inspector General, Treasury Department Inspector General, also investigated. Isn't that correct?

Mr. CHAFFETZ. Let me amend the previous answer and tell you that what we looked at was what Mr. Koskinen did and did not—

Mr. JOHNSON. Okay. No—

Mr. CHAFFETZ. If you want clarity, I'll give it to you.

Mr. JOHNSON. Well, I just want you to answer my question. Isn't it a fact that DOJ, Department of Justice, investigated this IRS issue?

Mr. CHAFFETZ. What I'm trying to say is—

Mr. JOHNSON. Yes or no?

Mr. CHAFFETZ. There's two parts to this. They—

Mr. JOHNSON. Okay. All right. Well, you don't want to answer my question about—

Mr. CHAFFETZ. No, I do. I want to give you a complete answer, and the complete answer—

Mr. JOHNSON [continuing]. The Senate Finance Committee, the DOJ, and the Treasury Inspector General. All three of those enti-

ties investigated this so-called scandal involving the IRS, and each one came to——

Mr. CHAFFETZ. No. That's not true.

Mr. JOHNSON [continuing]. Each one came——

Mr. CHAFFETZ. That's not true.

Mr. JOHNSON [continuing]. To the conclusion that there was no criminal——

Mr. CHAFFETZ. Disagree.

Mr. JOHNSON [continuing]. Intent on anyone's part——

Mr. BUCK. Mr. Chairman?

Mr. JOHNSON [continuing]. To violate the law. Isn't that——

Mr. BUCK. Mr. Chairman? Can we have regular order, please? The gentleman is over his time.

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

Mr. JOHNSON. Well, I'd ask the Chairman for an additional 1 minute to finish eliciting responses to the questions that I asked.

Mr. BUCK. And I would object, Mr. Chairman.

Mr. GOWDY. Will you let him answer?

Mr. JOHNSON. I'd love for him to answer the question that I asked as opposed to filibustering.

Mr. GOWDY. Well, then let him talk.

Mr. GOODLATTE. Regular order. The gentleman is recognized for an additional minute, with the understanding the gentleman will yield to the witnesses so they can answer your question.

Mr. JOHNSON. Well, I'll restate my question then. And thank you, Mr. Chairman.

Isn't it a fact that the Senate Finance Committee, the Department of Justice, and the Treasury Inspector General all investigated this alleged IRS scandal that is the subject of this hearing today and each one of those entities found that there is no evidence whatsoever that anyone acted with criminal intent? Isn't that a fact?

Mr. CHAFFETZ. No. What the Senate Finance Committee said, there was "bipartisan agreement that the IRS showed a lack of candor." That was the——

Mr. JOHNSON. You're not answering my question.

Mr. CHAFFETZ. Give me time to answer that question.

Mr. JOHNSON. That requires a "yes" or "no."

Mr. CHAFFETZ. It requires a complete answer because you're conflating two issues. One issue was the investigation into Lois Lerner and her actions on her emails. This impeachment resolution that we have put forward deals with Mr. Koskinen and his actions, his ability to tell the truth, and how he misled Congress. That is not something the FBI looked at. In fact——

Mr. JOHNSON. Sir, you're not answering my question.

Mr. CHAFFETZ. Yes, I am. And, in fact, it would be duly noted that the FBI never interviewed Mr. Koskinen——never interviewed him.

Mr. JOHNSON. I didn't mention the FBI. I said the DOJ.

Mr. CHAFFETZ. You said the Department of Justice, I believe.

Mr. JOHNSON. I said the DOJ.

Mr. CHAFFETZ. Well, they're part of the Department of Justice.

Mr. JOHNSON. You're not answering my question.

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

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

Mr. GOHMERT. Thank you, Mr. Chair.

I appreciate the witnesses being here today because this is important since the Internal Revenue Service is the only entity of which I'm aware in the Federal Government that can ignore the Constitution as part of its job. Nobody else gets to ignore the Constitution. But they can take people's money without due process, they can take their property, they can move in and destroy a business that took a lifetime to build. And they have done that.

So it is particularly important that the agents that work for such an agency that can ignore the Constitution must, itself, be completely overwhelmed with integrity. And what we've seen is not the case. I know and have known IRS agents who are as fine and honest a people as walk the Earth. I've heard from IRS agents who have been furious privately to see the kind of corruption and dishonesty that has overwhelmed the top of the Internal Revenue Service, because, as one told me, when she just filed an amended tax return because she had forgotten \$600, even though she still had a refund coming back, she was called in and was going to be fired because IRS agents have to be so above-board that their integrity can never be questioned—until you get to the supervisors and above. And that's where the rot is occurring, and the stink is getting overwhelming.

One of the judges in Tyler, Texas, a Federal judge, William Wayne Justice, he did legislate from the bench, was wrong. But that man had such an incredible sense of integrity, had he been listening to Commissioner Koskinen, the man would have spent time in jail before he finished his testimony. He had no use for people that would come in and obfuscate as this man has done.

Now, back under the Bush administration, in this Committee, we had an Attorney General come in here, and under questions about the National Security Letters, he testified from the very table our witnesses are sitting at that there were no known abuses of the National Security Letters. They were something like the IRS might use, demanding production of documents without going through a judge.

He testified similarly in front of Chuck Schumer's Committee. And then it was later found—and I watched a replay of the testimony late one night, where he testified, oh, well, it turns out that he had an IG report on his desk 3 days before he testified before the Senate that indicated there were thousands of abuses of the National Security Letters and that he didn't know that. And under very tough questioning from Senator Schumer, he said, "Look, it was on my desk for 3 days, that's true. But I just never really looked at it, so I didn't know. I wasn't lying."

I was so outraged at the lack of integrity or the incompetence, whichever, of something that important, I called the White House chief of staff and said, "You've got to get rid of this guy. He cannot be defended by Republicans again. This is outrageous."

And my question, not just to the witnesses but to all my colleagues across the aisle, is where is the Democrat with the righteous indignation for this kind of obfuscation and dishonesty that will call the White House and say, as I did of an Attorney General,

this man has to go. And within a month, that Attorney General was gone. I would love to see the Democrat that still has that kind of righteous indignation to stand up and call it as it is, without regard to party.

I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentlewoman from Washington, Ms. DelBene.

Ms. DELBENE. Thank you, Mr. Chair.

Congressman Boustany told a reporter that the House's time would be better spent continuing to investigate the IRS' treatment of organizations seeking tax-exempt status, as opposed to whatever you'd like to call this grandstanding on impeachment, because, let's remember, this is not even an impeachment hearing.

And I agree with our colleague from Louisiana. You can think whatever you like about Commissioner Koskinen, but what we're doing today does absolutely nothing to bring truth to light, except maybe show that the record our witnesses have presented is thin at best.

I think Senator Hatch summed it up well. He said, "We can have our disagreements with him, but that doesn't mean there's an impeachable offense."

The real elephant in the room today is that the IRS actually does have significant issues, substantiated ones, that Congress should be talking about. I regularly hear from constituents who are worried about identity theft after their data at the IRS was compromised; others who find it infuriating that they have to pay money to an expert just to file their taxes because the Tax Code is so complicated; and, even worse, constituents who can't even get through to the IRS by phone for assistance during filing season because the agency has become so underfunded it can barely serve American taxpayers.

If we really want to improve government accountability and efficiency for the benefit of the American people, let's start talking about getting our constituents a good return on their investment. Let's commit in earnest to solving some of these issues. And let's stop wasting time on circuses like this.

When the vast majority of the House and the Senate, Republicans and Democrats alike, can agree that the evidence to support impeaching Commissioner Koskinen is not there, I think it's time to move on from these games and do some real work.

I yield back.

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

Mr. JORDAN. I thank the Chairman and thank Chairman Goodlatte for having this important hearing today.

John Koskinen had several duties. He breached every single one. He had a duty to preserve documents under subpoena. He had a duty to produce those documents that were under subpoena. He had a duty to disclose to Congress if he couldn't preserve and produce those documents that were under subpoena. He had a duty to do that in a timely fashion. He had a duty to testify accurately. He had a duty to correct the record if, in fact, he testified in an inaccurate fashion. He breached every single duty he had, and

that's what Congressman Chaffetz and Congressman DeSantis have outlined for us all here this morning.

No wonder the guy didn't show up. If I had that kind of record, I don't think I'd have shown up today either.

I mean, never forget what happened here. The Internal Revenue Service, and the power that it has over American citizens' lives, systematically targeted fellow citizens for their political beliefs. They did it for a sustained period of time. And they got caught. And when they got caught, they did what a lot of people do when they get caught. They lied about it, right?

Remember, May 10, 3 years ago this month, May 10, Lois Lerner, bar association speech here in town, trying to get ahead of the story before TIGTA was actually going to release the first report, not the one we're talking about today, but the first report, trying to get ahead of the story. The central figure at a bar association meeting has a friend ask a planted question, and Lois Lerner says what? Wasn't me, wasn't Washington, it was those folks in Cincinnati. Complete lie.

Twelve days later, May 22, she takes the Fifth—interestingly enough, the same day that the IRS tells themselves, “Preserve all documents.” The same thing same day Lois Lerner is taking the Fifth, the IRS says, “Preserve all documents,” May 22 of 2013.

Now, when the central figure lies and then takes the Fifth, it sort of puts a premium on getting the documents and the information and all her communications, right?

And so then comes in Mr. Koskinen. And when he is hired, when he is confirmed, here's what the President said: We need “new leadership that can help restore confidence going forward.” That's what he was brought in to do. And I would argue, based on breaching all six duties he had, he has done anything but restore confidence.

So, under his watch, as we learned from the good testimony today from Mr. Chaffetz and Mr. DeSantis, what happens? He allows 422 backup tapes to be destroyed. When he learns about it, he waits 4 months before he tells us, the Congress doing an investigation. He doesn't even—and he doesn't even check on any other backup tapes that exist, because we found out there were 700 others that weren't destroyed that could have helped us. He didn't even check when he told us that some of these had been destroyed.

Which leads us to the one question I have.

And I want to thank the Chairman again for this hearing and the second hearing that's coming.

But, Mr. DeSantis, is the standard, in your judgment, is the standard for impeachment a criminal intent standard?

Mr. DeSANTIS. No. I think that's pretty clear. If you look at Alexander Hamilton in *The Federalist*, he said that impeachment was about the violation of public trust and that those offenses are inherently political, as they relate more to injuries done to the society and the way that government works.

And then Joseph Story in his commentaries on the Constitution several decades later said that these need to be thought of as political offenses growing out of misconduct or gross negligence or usurpation or other disregard for the public interest. And he said that

they must be examined upon very broad and comprehensive principles of public policy and duty.

Mr. JORDAN. Gross negligence, dereliction of duty, breach of public trust, right?

Mr. DESANTIS. Sure.

Mr. JORDAN. Mr. Chaffetz, do you think Mr. Koskinen exhibits some gross negligence in his conduct over the last several months in trying to help us get to the bottom of this scandal?

Mr. CHAFFETZ. Absolutely.

Mr. JORDAN. Do you think there was a dereliction of duty?

Mr. CHAFFETZ. Yes.

Mr. JORDAN. It seems to me a dereliction of duty when you wait 4 months to tell Congress, right? His chief counsel knew in February of 2014 that there were problems and a gap in Lerner's emails, and he doesn't tell us until June? His chief lawyer knew, and he waits 4 months? And the reason he told us he waited 4 months was because he was doing his due diligence to make sure that actually happened. And part of that due diligence wasn't even checking to see if there were backup tapes available. I think that's a dereliction of duty.

And, obviously, when you look at this—and here's the other thing. Breach of public trust. Oh, my goodness. We just heard the Democrats talk about problems with the IRS. They said the cybersecurity breach. We had GAO tell us the tax gap at IRS is \$385 billion. Their fundamental duty is to collect revenue due the Federal Treasury. They can't even fulfill that. But they've got time to target people and make sure they destroy backup tapes in the course of an investigation? I mean, for goodness' sake, this is certainly breach of public trust, dereliction of duty, and negligence in gross, gross form.

Mr. Chairman, again, I want to thank you for this first hearing. I look forward to the second one, where we're going to have some experts, I believe, come in and talk about the standard that has to be met to get rid of someone who's conducted himself the way Mr. Koskinen has. But I thank you for this and look forward to the next hearing.

I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from New York, Mr. Jeffries, for 5 minutes.

Mr. JEFFRIES. Thank you, Mr. Chairman.

I've had the opportunity to serve in the Congress now for about 3½ years. And, to me, I think the greatest evidence of gross negligence, dereliction of duty, breach of public trust was when Members of this body in October of 2013 decided for purely political reasons that you were going to shut down the government for 16 days and cost the economy \$24 billion in lost economic activity. And yet we have to sit here at this hearing and be lectured about alleged gross negligence and breach of trust.

People need to look at their own conduct, their own behavior, and how that's impacted the American people and their bottom line rather than subject us to this taxpayer-funded fishing expedition. Because there's an addiction that some have—not the distinguished Chairman who's sitting before us right now—but there's an addiction that some have in this body to impeachment.

Now let me ask Mr. DeSantis a question.

Do you think that President Barack Obama has committed an impeachable offense during his 7-plus years in office?

Mr. DESANTIS. I've never argued that, and it's really irrelevant. I think the IRS is within the context of the IRS, and that's what we're focusing on.

Mr. JEFFRIES. Okay.

Now, the Chairman of the Senate Finance Committee is Orrin Hatch. Is that correct?

Mr. CHAFFETZ. Yes.

Mr. JEFFRIES. And he's got jurisdiction over the IRS, as Chairman of the Finance Committee. Is that right?

Mr. CHAFFETZ. Yes.

Mr. JEFFRIES. And he's a well-respected Member of Congress, correct?

Mr. CHAFFETZ. Yes.

Mr. JEFFRIES. A man of integrity?

Mr. CHAFFETZ. Yes.

Mr. JEFFRIES. And he stated, "We can have our disagreements with him," meaning the IRS Commissioner, "but that doesn't make it an impeachable offense." Is that correct?

Mr. CHAFFETZ. I think what Senator Hatch and the Senate Finance Committee may be looking at may be different than what we're looking at. Many of these statements that I believe were false and misleading happened in the House of Representatives.

And I would also note that the Senate Finance Committee came to a conclusion that "bipartisan agreement that IRS showed a lack of candor."

Mr. JEFFRIES. Now, the essence of this controversy, as I understand it, relates to the possible destruction of documents. Do you believe that that destruction was intentional, or was it incompetence?

Mr. CHAFFETZ. The IRS would argue that it's accidental, and let's take their word for it for a moment. That's not acceptable. When there's a duly issued subpoena, they have a legal obligation to protect and preserve. And they did not do that.

Mr. JEFFRIES. Now, in terms of what the IRS may have said, let's put that to the side for a second. J. Russell George is the Treasury Department Inspector General. Is that correct?

Mr. CHAFFETZ. Yes.

Mr. JEFFRIES. A man of integrity?

Mr. CHAFFETZ. Yes, I believe so.

Mr. JEFFRIES. Well-respected inspector general?

Mr. CHAFFETZ. Yeah.

Mr. JEFFRIES. Bush appointee. Is that right?

Mr. CHAFFETZ. I think originally. He also had worked previously for the Oversight and Government Reform Committee at one point.

Mr. JEFFRIES. Okay. Republican appointee. Now, did the report that he issued uncover any evidence of intentional destruction of evidence by the IRS.

Mr. CHAFFETZ. I was very careful in my comments to separate out what had happened with Lois Lerner and the emails, and the actions by Mr. Koskinen himself. The inspector general did not look

and investigate what Mr. Koskinen—the totality of what’s in a resolution.

Mr. JEFFRIES. Now the Inspector General’s report concluded: “The investigation did not uncover evidence that the IRS and its employees purposely erased the tapes in order to conceal responsive emails from the Congress, the DOJ or the Inspector General.” Is that correct, that finding in the report page 3, paragraph 2?

Mr. CHAFFETZ. I believe you stated that accurate.

Mr. JEFFRIES. Okay. So what I’m trying to understand is we’re here considering an impeachment proceeding. Perhaps the most severe remedy available to Congress as it relates to a separate but coequal branch of government where a Republican appointed inspector general concluded that the underlying act that we should all be concerned about was accidental, not intentional. But we then have a theory that even though the Republican appointed inspector general concluded that the underlying act, if anything, was based on incompetence, it wasn’t intentional, that the IRS commissioner subsequently came before Congress to conceal something that itself, while incompetent, wasn’t criminal, according to the Republican appointed inspector general.

I just think that this is respectfully a remedy in search of a problem and that we have better things that we could be doing with our taxpayer dollars to put the American people in a better place in terms of their quality of life.

And I yield back.

Mr. CHAFFETZ. Chairman, may I respond to that?

Mr. GOODLATTE. The time of the gentleman has expired, but the witnesses will be allowed to respond briefly.

Mr. CHAFFETZ. The first question you have to ask is did they destroy documents that were under subpoena. I think the answer is clearly yes. Whether you believe that was an accident or intentional, that really will be for the next hearing that we have next month about what is the standard for impeachment. I don’t believe you have to prove intent in order to get there.

And to the 60,000 people, constituents of yours, and mine, and others that will get a subpoena and that will get a summons from the IRS, is it good enough for them to just come back and say, you know, I had those documents and by golly, it was an accident, I destroyed them all. Do you think that’s going to fly? Heck no, no way. And so that’s a fairly weak argument.

The question is did they destroy documents that were under subpoena? The answer is yes. Did they provide false and misleading testimony to Congress? Yes and on more than one occasion. If that testimony was not accurate and they wanted to correct it, they had a duty and obligation to do it and they never did do it and I could go on.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from Pennsylvania, Mr. Marino for 5 minutes.

Mr. MARINO. Thank you, Chairman. Let me read to you a summary that was put together concerning a method by which we could address these matters not only to gather information but from a criminal standpoint. Under the Constitution and its separation of powers, principle and structure, Congress has no direct role

in Federal law enforcement nor in triggering, or initiating the appointment of any prosecutor for a particular matter.

Congress has a legislative role in designing a statutory mechanism for the appointment of independent counsels or special prosecutors as it did in Title VI of the Ethics in Government Act of 1978.

Under the provisions of that law relating to the appointment of independent counsel, called special prosecutors, until 1983, the Attorney General was directed to petition a special three judge panel of the U.S. Court of Appeals to name an independent counsel upon the receipt of credible allegations, which we have here, of criminal misconduct by certain high level personnel in the executive branch of the Federal Government, whose prosecution by the Administration might give rise to an appearance of a conflict of interest.

In 1999 Congress, in its infinite wisdom, allowed the independent counsel provision law to expire. Upon the expiration of the law in June 1999 no new independent counsel or special prosecutors may be appointed by a three judge panel upon the application of the Attorney General. The Attorney General retains the general authority to designate or name individuals as special counsel to conduct investigations or prosecutions of particular matters or individuals on behalf of the United States.

As a result, and as a result of what has taken place with the IRS, and how untruthful they've been, I'm personally moving forward to drop legislation that reenacts Title VI of the Ethics in Government Act of 1978 where independent counsel can be appointed to investigate these matters so justice can be served.

And I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from Rhode Island for 5 minutes.

Mr. CICILLINE. Thank you, Mr. Chairman.

Before I begin I want to stress that I have a great deal of respect for the two Members before the Committee today. I have been fortunate to have worked with both of them on legislation and recognize the sincerity of their views. However, I must respectfully disagree with the conclusions they have drawn today before this Committee.

My friend and colleague Chairman Chaffetz has called for the impeachment of IRS Commissioner John Koskinen and he argues that the commissioner has obstructed justice, perjured himself before a congressional Committee, and has failed to provide oversight of the investigation of the IRS.

The Treasury, inspector general for tax administration, the Senate Finance Committee, and the Department of Justice however have each conducted their own investigation into 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 Commissioner Koskinen deliberately misled Congress or attempted to obstruct a congressional Committee. In fact, each of these investigations found no evidence whatsoever that the commissioner has acted in bad faith. Under his direction the IRS spent \$20 million and has

devoted more than 160,000 hours to collect, review and produce 1.3 million pages of documents to investigating Committees. This includes over 78,000 emails sent or received by Lois Lerner, including over 24,000 emails that were affected by Ms. Lerner's hard drive crash. It is hard to challenge this as an attempt to stonewall—I'm sorry, it is hard to characterize this as an attempt to stonewall, hinder or otherwise obstruct a congressional investigation.

The overall record built on multiple investigations fails to support the allegations leveled in this hearing. I regret that we are not addressing many of the issues at the IRS that were raised by the gentlelady from Washington that would have a real impact on the services provided to our constituents.

I also regret that we are not using the time today to hold a hearing on criminal justice reform, gun violence prevention, legislation to protect the intellectual property rights of artists and musicians or comprehensive immigration reform.

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

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

Mr. GOWDY. Thank you, Mr. Chairman. I was thinking to myself as Chairman Jordan was talking about kind of the history, the chronology of this investigation as these two witnesses well know, there were what about a half dozen defenses offered by the IRS throughout the course of this investigation, each of which collapsed under its own illogic.

It began with the two people in Ohio that were blamed, and then it went to my personal favorite defense which is that is that the IRS was too incompetent to be able to construct a scheme as sophisticated as this scheme was. And then they moved from that defense to the yeah, but we also targeted progressives too so at least we were equal in our discrimination. And then my favorite, the one they settled on toward the end was yeah, but the President himself did not personally approve this targeting scheme. Therefore, you don't need to look at it anymore.

I know the next hearing is about the process—Koskinen had mentioned due process in his opening statement that he didn't give to us. And the next hearing is about what processes do—the procedural part of due process. Where this one more of a substantive part of the due process analysis. And I'm interested as other Members are. What elements need be proven, what's the standard of proof? Is it clear convincing evidence? Is it preponderance? Is it beyond a reasonable doubt? Does anyone know? Do the rules of evidence apply? Can you use hearsay? So I'm interested in that, but Chairman Chaffetz, you said something, that I wrote down, which doesn't happen very often, but it did happen today, which is that impeachment is a penalty, a punishment, and you're exactly right it is, it is a punishment.

What Congress really wants is access to the documents and the witnesses, because that is the lifeblood of any investigation, you cannot conduct an investigation if you don't have access to the documents and the witnesses. We know that. Unfortunately those who seek to not be investigated also know that.

So until this body begins to incrementally assert itself with impeachment—acknowledge being the ultimate penalty—by the way, I want to make sure since I have two experts—well one for sure expert in front of me and then the Chairman of Oversight, did I hear correctly that incompetence is not an impeachable offense? Because I always believe that malfeasance in office or the failure to perform the duties of your office could be an impeachable offense. Is that your understanding as well.

Mr. CHAFFETZ. It could be a factor, yes.

Mr. GOWDY. So how could incompetence be a defense if the allegation is incompetence? If that's what we're alleging. I mean it doesn't have to be a crime. The notion that you can only impeach someone who commits an actual violation of the criminal code is nonsense. There are lots of ways to screw up in your job that don't rise to the level of meeting the U.S. criminal code.

So the notion, if I heard it correctly, that incompetence is a defense to an allegation of being incompetent, it's hard for me to get my head around that.

All right let me ask you this, either Chairman DeSantis or Chaffetz, Mr. Koskinen said every email has been preserved. Is that true or false?

Mr. CHAFFETZ. False.

Mr. GOWDY. So if it is false then the next line of inquiry was whether it would be intentionally false, negligently false, whether or not he had a duty to investigate but did not perform that duty, I guess that's what we want to investigate, right? Not the falsity of it, but the nature of the falsehood?

Mr. DESANTIS. Yeah. And I mean you're a prosecutor and these aren't criminal offenses but you remember 18 U.S.C. 1001 a reckless disregard for whether a statement is true, or a conscious effort to avoid learning the truth of a statement, can be construed as actually making a knowingly false statement. And so we're in a situation here where at best he just simply refused to avail himself of the proper facts, and came to Congress, and testified under oath, and made a statement that is just factually incorrect.

Mr. GOWDY. I also have a note, backup tapes from 2011 no longer exist. Was that true or false?

Mr. CHAFFETZ. That is true. Now they went back and they were able to find some, but they were, as they call it degaussed.

Mr. GOWDY. So it would be false to say they no longer exist. Clearly they exist because somebody went and found them.

Mr. CHAFFETZ. It's how you define degaussing, but some went through this degaussing process.

Mr. GOWDY. Oh, you're talking about degauss. You're losing.

Mr. CHAFFETZ. Exactly but that was their defense. That was what they suggested.

Mr. DESANTIS. They destroyed a lot of tapes obviously but then there were other tapes that the inspector general—after the commissioner made the statement they just hopped in their car, went to West Virginia, asked for tapes, and they found a bunch of tapes. I think there were 1,000 unique emails that they were able to find off those tapes. So when the commissioner said that there were no backup tapes at the time he said that that was false.

Mr. GOWDY. Well, I know I'm out of time, Mr. Chairman, but I'm looking forward to the next panel, because I am interested in hearing how incompetence can be a defense to an allegation of incompetence. And I think it would be the law professors that will have to explain that one to us.

I yield back.

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

Mr. POE. Thank you, Mr. Chairman. Thank you all for being here.

One of these incidences with the IRS includes a group of folks in Texas, Catherine Englebreck you all know her, and just put it back in the record, in July of 2010 they filed for an IRS non profit status for True the Vote for King Street Patriots in Texas. In December of 2010, the FBI domestic terrorism unit inquired about one of the meetings. They came back in January of 2011, the FBI. All of a sudden having never been audited by the IRS, ever, Catherine Englebreck and their personal finances were audited by the IRS from 2008, 2009, through the vote in March of 2011, IRS questions about the introduced questions on non profit application.

Once again, in May 2011 the FBI shows up after one of their meetings. October of 2011 once again the IRS sends more questions second round. And some of these questions were including where have you spoken? Who did you speak to? What are the list of the people who were there? What did you say? And give us a copy of this speech and all your future speeches. IRS inquiry.

And then in June of 2011 once again FBI inquiry. November, December, FBI inquiry. Once again the Truth Vote had more questions, third round from the IRS, the King Street Patriots had more questions from the IRS about their application. And then all of a sudden, February of 2012, the Bureau of Alcohol, Tobacco, and Firearms shows up to investigate this organization.

And then July of 2012, OSHA shows up to investigate their non-profit request. And then the Texas commission on environmental quality showed up in November 2012. And once again fourth round of questions from the IRS, March of 2013, more questions from the IRS. And then once again in April 2013 the Bureau of Alcohol, Tobacco, and Firearms shows up again. So you have got the FBI, you have got OSHA and you have got even the Harris County terrorism task force showed up to investigate these folks. All they are looking for is whether or not they can get an exemption from the IRS.

Now, to me this appears to be an abuse of the IRS working with other government agencies about this one issue of whether they should get tax exempt status, it is political persecution by the IRS.

And as you mentioned, Mr. Chaffetz, in your opening statement. The IRS knows how to get things done by their subpoena.

They have ways of getting you out there to the fruited plain, to get this information. They show up all these different times trying to get information. To your knowledge, either one of you, has the IRS, any agent, any person, been held accountable for the abuse of power that they used against this one citizen back in Texas?

Mr. CHAFFETZ. No, I'm not aware of any.

Mr. POE. Mr. DeSantis?

Mr. DESANTIS. No.

Mr. POE. All of the accusations against the IRS and there have been numerous, you all have done all the investigation of all these organizations who have been trying to get tax exempt status. The abuses that have occurred or the alleged abuses that have occurred, has anyone in the IRS been fired?

Mr. CHAFFETZ. No. Mr. Koskinen stands by all of his statements, even to this day. They claim it was an accident, but nobody was dismissed, reprimanded, moved. I'm not aware of anybody having any consequence. And the GAO came back and studied it later and found that the situation is dire, it's bad and it's still available for targeting.

Mr. DESANTIS. Even Lois Lerner retired with full pension, even though she had been held in contempt of Congress.

Mr. POE. Nobody's gone to jail? Nobody's gone to jail?

Mr. DESANTIS. No.

Mr. POE. And you had a Federal judge what 3 months ago, make the comment that D.C. Circuit Court judge here in Washington make the comment that the IRS cannot be trusted. Are you all familiar with that statement by a Federal judge after hearing one of these lawsuits?

Mr. DESANTIS. Yes.

Mr. POE. I'm out of time, Mr. Chairman.

I yield back.

Mr. RATCLIFFE [presiding]. The Chair thanks the gentleman.

Mr. FARENTHOLD. Thank you very much, Mr. Chairman. You know, I sometimes ask myself what I'm doing here in Congress. I get frustrated and sometimes depressed, sometimes angry, because I don't like the way things are going in Washington, D.C. We pass hundreds of bills just so see them die in the Senate. The good stuff that does pass the Senate probably gets vetoed by the President. The President regularly bypasses Congress with what I consider to be illegal and unconstitutional executive orders. Am I wasting my time being here?

But what pulls me through on this is remembering that we are the elected Representatives of the people of United States. And the people of United States want us to do something. They are mad. They are angry. They don't like the gridlock in Washington, D.C. They don't like a big, intrusive government. They don't like the high taxes that they are having to pay. And you know what I think they like the least? Being lied to by their elected Representatives, whether it's the President with if you like your health insurance you can keep it or his appointees like Mr. Koskinen. We have got to take a stand and say, we are not going to be lied to in Congress.

You know, in Texas there is an anti-litter campaign it says, don't mess with Texas. It is kind of an unofficial motto of Texas. We need to reclaim some of our constitutional authority. And people need to be thinking don't mess with Congress. When you're called to testify before a Committee of Congress or whether you're subpoenaed to produce documents, you should do so promptly and you should do so truthfully.

I'm seeing an alarming trend. I think the Administration and their officials have learned you can obfuscate, you can delay, and maybe the new cycle will forget it and it will go away. But that's not the way it's supposed to work, that's not the way our Founding

Fathers intended it. That's not the way the people who sent me to Washington, D.C. want to see it happen. They want us to do our job. They want us to hold the government accountable.

Chairman Chaffetz you chaired the Oversight and Government Reform Committee. Are you seeing this same pattern?

Mr. CHAFFETZ. I am and I think you've hit the nail on the head, Mr. Farenthold. I know you're passionate about these issues. And that's in part why I came to Congress as well. The Administration knows it can delay and we can't let them get away with it. And it is a principle. It should be true on both side of the aisle. This is not a partisan issue, it shouldn't be, it shouldn't be.

Mr. FARENTHOLD. We saw it with Eric Holder, we saw it with Fast and Furious, with have seen it with Hillary Clinton's emails. It goes on and on. And this is our opportunity to take a stand.

I'm a cosponsor of your impeachment legislation on Mr. Koskinen. Do you think that proceeding with this will send the message to the Administration and the alphabet soup of executive branch agencies, don't mess with Congress?

Mr. CHAFFETZ. I do. I believe the Constitution is an inspired document and our Founders put this mechanism in place specifically on civil officers. We studied this for 3 months with House counsel and determined if you're confirmed by the Senate with coequal vote to go into that highest echelon of government, impeachment is a process by which we can extract that person if they are not serving the best interest of the United States of America.

Mr. FARENTHOLD. I'm also with, my colleague, Mr. Gowdy, looking forward to hearing from the law professors, because my recollection from my constitutional law studies in San Antonio, Texas, was the impeachment clause means high crimes and misdemeanors, and what can be impeached. Congress decides what those are.

Mr. CHAFFETZ. Exactly.

Mr. FARENTHOLD. And I think it is our opportunity to re-exert our authority and our oversight prerogative. And I think it's critical to maintaining the republic that the government officials, who are paid by the taxpayers, answer truthfully and promptly to the taxpayers Representative.

Mr. ISSA. Would the gentleman yield?

Mr. FARENTHOLD. Oh, yes.

Mr. ISSA. With the remaining time, there has been a lot said by the gentleman on the other side of the aisle about how the Department of Justice has found no crime, no wrong doing, no targeting. Mr. Chairman, you've continued where I left off on the Committee. Do you find that to be inaccurate? In other words, is it fair to say that the Department of Justice's failure to see what you see so clearly as continued targeting is in fact part of a coverup, that continues today? Their not seeing what is in plain sight is in fact part of the reason you're here.

Mr. CHAFFETZ. Potentially one of the things that I'm concerned about is the FBI never interviewed Mr. Koskinen. And I would question the thoroughness in which they came to this conclusions.

Mr. ISSA. I thank the gentleman for yielding.

Mr. FARENTHOLD. And my time has expired.

Mr. RATCLIFFE. The gentleman yields back. The Chair recognizes the gentleman from Idaho, Mr. Labrador.

Mr. LABRADOR. Thank you, Mr. Chairman.

This investigation I think has yielded some interesting and very concerning results. I want to first start by thanking Mr. Issa for all of his hard work on this issue when he chaired the Oversight Committee. And I also want to thank Mr. Chaffetz for continuing this investigation in getting us to this point.

As I review the evidence and report the similarities between this and Watergate are staggering. I'm going to apologize I will be the second person to use Wikipedia today, but this is from Wikipedia. The term Watergate has come to encompass an array of clandestine and often illegal activities, undertaken by members of the Nixon administration. Those activities include as such dirty tricks as bugging the offices of political opponents and people of whom Nixon or his officials were suspicious. Nixon and his close aides order harassment of activist groups and political figures using the Federal Bureau of Investigation, the CIA and the IRS.

In July 1973, evidence mounted against the President's staff, including testimony provided by former staff members, in an investigation conducted by the Senate Watergate committee. The investigation revealed that President Nixon had a tape-recording system in his offices and that he had recorded many conversations. After a protracted series of bitter court battles, the U.S. Supreme Court unanimously ruled that the President was obligated to release the tapes to government investigators and he eventually complied. These audio recordings implicated the President—and this is the key—revealing he had attempted to cover up. Not that he participated in the crimes, but that he had attempted to cover up activities that took place during after the break-in and to use Federal investigation officials to deflect the investigation.

As I listen to the testimony, as I listen to all the evidence, there is such an eerie similarity to Watergate. We had government officials that were persecuting their political enemies, who were going after them, using the IRS and other agencies. The difference is that unlike Watergate, we have lost the tape. We can't prosecute these people because they destroyed the evidence. As far as we know, and as the evidence shows, and as history shows, Watergate did not include any destruction of evidence. They tried to hide the evidence, but they didn't destroy it because the Supreme Court was able to figure it out and was able to tell the Nixon administration to bring this evidence forward.

But what I want to focus on today are these emails which to me are like the Nixon tapes. Much like the 18½-minute gap of the Nixon tapes the sheer convenience of a hard drive crash of multiple other high-level officials experiences system crashes and the subsequent erasing of backup data is highly disturbing.

As many of these emails were subject to congressional subpoenas, the potential of a true coverup and of the undermining of democracy and of the Democratic process becomes even more apparent in what we're talking about today. This Committee in my opinion has a critical responsibility and I hope that Members from both sides of the aisle will give this matter the attention it deserves.

And it actually saddens me that there is only one Democrat right now on the other side. The reason we got to the bottom of Watergate is because Republicans and Democrats decided to take the investigation seriously.

Lois Lerner's hard drive crash in June of 2011, as you indicated 8 days after the Camp letter asking for the information TIGTA'S report that is hailing its investigation from June 13, 2014, through June 29, 2015, included a tracking of the crash hard drive and the procedures that took place. Do you believe that the IRS followed the proper protocols when addressing this crashed hard drive in 2011?

Mr. CHAFFETZ. No, I don't believe they did.

Mr. LABRADOR. The TIGTA report of investigation identified six possible sources that would potentially recover the missing emails. To your knowledge, following receipt of subpoena for the emails, how many of these sources were identified and examined by the IRS in an effort to comply with the subpoena?

Mr. CHAFFETZ. The inspector general indicated that five of six were not sought nor were they investigated.

Mr. LABRADOR. Is there evidence in your opinion to suggest that the destruction of these tapes was part of a concerted effort to not comply with the congressional subpoena?

Mr. CHAFFETZ. I want to be very careful not to overstep. We see nothing that implies direct intent. And I want to be very careful with that, but the IRS will call it an accident. But again, as I've said many times before, they had a legal duty to preserve, protect, to find, seek and present those to the United States Congress and to that they did not do it.

Mr. LABRADOR. They call it an accident, I call it a series of unfortunate coincidences. I think it is outrageous for anybody to think that this was a coincidence. And just to borrow from Watergate, I would like a better understanding and I hope that we can get to the bottom of this of what Mr. Koskinen knew and when he knew it. And I think that's what this Committee has the duty to find out.

Mr. CHAFFETZ. I do hope that people on both side of the aisle will just look strictly at the fact, did they or did they not destroy the evidence? They did. Did they or did they not provide false testimony and mislead Congress? Yes, they did. When they knew it was wrong, did they come back to Congress and correct it? No, they did not.

There is is a series and a pattern here not merely and accident. It goes beyond that. Whether it is a Democrat or a Republican or whether it is a Democratic administration or a Republican administration, it shouldn't matter. You cannot destroy evidence that is under a duly issued subpoena. And there should be a consequence to that. And then you can't come to Congress and lie about it, which is clearly what happened here.

Mr. LABRADOR. Thank you.

I yield back my time.

Mr. RATCLIFFE. The gentleman yields back. The Chair recognizes the gentleman from Arizona, Mr. Franks.

Mr. FRANKS. Well, thank you, Mr. Chairman. Mr. Chairman, there has been so much very powerful and insightful testimony here today. And my purpose here is to try, given the fact that we

are coming down toward the end of this hearing, to try to bring us back to what this is all about.

You know, not to become too foundational, but we do still hold these truths to be self evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights. And among these are life, liberty and the pursuit of happiness. And to secure these rights—these are the key issue—that to secure these rights, governments are instituting among men deriving just powers from the consent of the government. And for my purposes I think that this last sentence of that that I just said is the most—deriving their just powers from the consent of the government.

Whenever we have a government that uses the power of the IRS or any of its police powers to deliberately coerce some of its citizens for their political views or for their religious views, that is by very definition tyranny, and it speaks against everything that is at the core of who this country really is.

So while we sometimes talk around the edges here, this is a very big issue. Did the government, did the Obama administration use their powers, their police powers, their powers at IRS, powers to intimidate people because they disagreed with them politically? If they did, that is profound and it is especially important for this Committee who holds itself to be the guardian of the Constitution to respond to that.

Now it is very clear to me that coercion did occur. It is very clear to me that damage and impact did occur on some of these conservative organizations. It is very clear to me that evidence was destroyed. It is very clear to me that there seems to have been astonishing coincidences at least in that process. And it is very clear to me that as Mr. Chaffetz has said the IRS never made any attempt to come back and correct those things if indeed this was all accidental.

What is not clear to me is why in the face of this we've seen such arrogance on the part of Mr. Koskinen and such a flippant attitude that seems to be sort of characterizing this Administration constantly that whatever these great abiding principles of this country really are, they are put aside, just flippantly for the sake of the political moment.

And so I just want to suggest to you that I think this is an important thing. And so I'll ask this question to the witnesses to both of them. I'll start with Mr. DeSantis, do you think that in this case that the IRS—that the affect of their action was to intimidate people based on their political persuasion?

Mr. DESANTIS. Well, in my opening statement I told the story about campaigning for office for the first time in 2012 and asking to speak in front of a group that was in the process of applying for tax exempt status, and they really freaked out about me being there because I was a political candidate and they were worried about the IRS. And at the time I thought they were just way paranoid. And I was, like, give me a break. Why would the IRS care about it? And then when the scandal broke in May of 2013, I immediately thought back to that and I absolutely saw an example of them chilling their conduct because they were concerned about the IRS.

Mr. FRANKS. Yeah. Mr. Chaffetz, do you think there was deliberate attempt on the part of some persons to target—

Mr. CHAFFETZ. Yeah, it does appear then that in the case of Lois Lerner that there was a concerted effort to target. That was the conclusion of the inspector general. That was why we got—this scandal has continued to grow. I separate that from the resolution that we had before us, but the underlying premise that they targeted conservatives to press their First Amendment rights? Absolutely. I think that issue has been clearly documented.

Mr. FRANKS. Well, my microphone—to end here, the purpose of my questions were simply to point out that, yes, intimidation did occur.

Mr. CHAFFETZ. Yeah.

Mr. FRANKS. And government power was used to do that. And at least some of those individuals knowingly did that. And that that is counter to everything we are as a republic, that we're a rule of law, not a rule of men. And if we overlook that, just carelessly or casually, then I think we fail the test of being not only the defenders of our Constitution but of our republic and of the people respectively.

And with that, Mr. Chairman, I hope we consider that carefully and I yield back.

Mr. RATCLIFFE. I thank the gentleman. I now recognize myself for 5 minutes.

I'd like to thank all of the Committees that spent countless hours investigating this matter. And I would like to particularly thank my distinguished colleagues that are here as witnesses today. Thank you for being here and for being here in the search for the truth.

If we were to rewind this story all the way to the beginning, we know that this began with the IRS singling out and targeting conservative groups because of their beliefs. We know that the IG has confirmed that. And a problem here is the IRS went after and targeted select groups of Americans because of their political beliefs. And in this case, it was of conservatives. I've listened to my Democratic colleagues across the aisle today talk about this hearing being an instance of grandstanding and calling it a circus. But I wonder if some of those Democratic colleagues might feel differently if it the IRS had been targeting other groups like environmentalists or LGBT advocacy groups.

You know, regardless of the type of American, Congress has to restore faith and trust in an agency that is doing targeting of any type of American. We're here at the wish of the American people, Congress is investigating because of that. The Committees are trying to right a wrong and to restore America's trust.

And unfortunately, because Lois Lerner, the driving force behind these initial outrageous activities, because she refused to cooperate with Congress' investigations, Americans are left really with one avenue for finding the truth, for learning the truth and that's through her email records.

The problem here is when the IRS was given a second bite at the apple, another opportunity, a second opportunity to restore and rebuild that trust, the IRS once again broke that trust with the

American people, this time through the behavior of IRS Commissioner Koskinen.

The facts here are really not in dispute. The commissioner failed to comply with the subpoena. He failed to prevent the destruction of evidence, in this case more than 24,000 of Ms. Lerner's emails. He provided false testimony to Congress on a number of occasions. His statement today said that he testified truthfully and to the best of his knowledge. But the fact is he didn't testify truthfully. It may have been to the best of his knowledge, but it was not truthful. And he failed to notify Congress when key evidence was missing.

His statement offers a whole range of excuses that the erasure of tapes was an accident, that he personally didn't erase them. Even goes so far as to say that he never even asked to be the IRS commissioner in the first place, but all of that misses the point.

As Harry S. Truman said, the buck stops here. It stops at the top. And once Commissioner Koskinen assumed the mantle of responsibility, he deserves to be, and ought to be, held responsible for any misconduct. When any official misleads the American people and their elected Representatives when they obstruct an investigation and they allow the destruction of key evidence, action has to be taken and has to be taken whether or not that's done intentionally, or knowingly, or whether it's done just through gross negligence. Whether it's through such reckless ignorance that it allows the truth to be forever obfuscated from the American people.

I wish that Commissioner Koskinen had chosen to be here today. I would have a number of questions for him. He's indicated he may come back before this Committee. I hope that he does. And if he does, I will give him advance warning of what we'd like to know. And that is, I'd like to know why despite learning in February of 2014 that thousands of Lerner emails were missing, the IRS never even tried to recover the backup tapes. Was that intentional or was it just a result of incompetence?

I would like to ask him why the IRS failed to look in five of the six places where the emails could have potentially been recovered. Again, was that something that was intended to mislead or was it just plain stupidity? I would ask the commissioner why he failed to notify Congress about the missing emails for several months despite a prior commitment on the record to be transparent and to notify us as soon as any problem arose.

I'd ask why he falsely testified to Congress when he said "Since the start of this investigation, every email has been preserved, nothing has been lost, nothing has been destroyed." Less truthful words have likely never been spoken before this Committee. I would like to ask the commissioner why he said those words in here under oath but unfortunately he's not here. Despite the serious allegations leveled against him he's declined to participate.

But the American people here deserve to know why they were misled. They deserve to know that the government officials are not above the law and that's what this hearing is about. And again, whether or not his actions were intentionally taken to deceive or whether he was so clueless, so incompetent, so grossly negligent, as to obfuscate the truth forever, we may not know. Either way, the commissioner has convinced me that he is not fit to lead an

agency that is has so much power and influence over the lives of every American.

And that concludes our hearing today. I thank our distinguished witnesses for attending.

Without objection all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record.

Mr. RATCLIFFE. With that, this hearing is adjourned.

[Whereupon, at 12:32 p.m., the Committee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

Questions for the Record submitted by the Honorable Henry C. (Hank) Johnson, Jr., a Representative in Congress from the State of Georgia, and Member, Committee on the Judiciary, to the Honorable Jason Chaffetz, a Representative in Congress from the State of Utah

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June 9, 2016

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The Honorable Jason Chaffetz
Chairman
House Oversight and Government Reform Committee
2157 Rayburn House Office Building

Dear Chairman Chaffetz,

The Committee on the Judiciary held a hearing entitled "Examining the Allegations of Misconduct Against IRS Commissioner John Koskinen, Part 1" on May 24, 2016 in room 2141 of the Rayburn House Office Building. Thank you for your testimony.

Questions for the record have been submitted to the Committee within five legislative days of the hearing. The questions addressed to you are attached. We will appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers to the Committee by **Thursday July 28, 2016**. Please send them via email or postal mail to the Committee on the Judiciary, Attention: Alley Adcock, 2141 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact Alley Adcock on my staff at 202-225-3951 or by email: alley.adcock@mail.house.gov.

Thank you again for your participation in the hearing.

Sincerely,


Bob Goodlatte
Chairman

Enclosure

Questions for the Record Submitted by Representative Hank Johnson:

“Examining the Allegations of Misconduct against IRS Commissioner John Koskinen, Part I”

House Committee on the Judiciary

May 24, 2016

Questions for the Record

Submitted by Rep. Hank Johnson on June 7, 2016

If Congress is going to investigate government officials for alleged misconduct or wasteful use of resources, staff, and money, then we as members of Congress should be willing to look within our own body as well. During the hearing on May 24, 2016, you played a ten-minute video outlining allegations of misconduct against Commissioner Koskinen. In response to questions, you testified that the video, which was primarily created by congressional staff, was available on the House Oversight and Government Reform Committee website, and that it had been distributed widely via Twitter, Facebook, and Instagram.

1. Who proposed the idea of creating this video? What was the purpose of creating the video?
2. When did work to create the video begin and end? Approximately how many hours did congressional staff spend creating the video?
3. Were any non-governmental entities or individuals not employed by Congress involved in the creation or dissemination of the video, including by providing funds, personnel, equipment, technical expertise, or video footage?
4. What are the sources of the information displayed in the video, including the stock footage, excerpted documents, audio and video clips, soundtracks, and voiceovers?
5. The video includes an image of what it calls “Lois Lerner’s hard drive” at 3:55, 4:01, and 5:14 of the video. Where did the House Oversight and Government Reform Committee obtain this image of Lois Lerner’s hard drive? If this is not an image of Lois Lerner’s hard drive, what is actually pictured in the video? Why does the video describe this image as “Lois Lerner’s hard drive?”

6. The video includes many close-up images of Commissioner Koskinen's face in black and white. Was original footage used to prepare these images in black and white, or was the footage altered? If they were altered, what techniques did congressional staff use to alter images of Commissioner Koskinen? For what purpose did congressional staff alter the original footage?
7. Please provide the Committee with complete, unaltered versions of the footage, images, and other source materials used to create the video.
8. To your knowledge, has this video been used by any member of the House Oversight and Government Reform Committee or any political committee in association with fundraising or campaign communications?

Responses to Questions for the Record submitted by Rep. Hank Johnson

1. The idea of a video was proposed to explain the complicated series of events surrounding the Oversight and Government Reform (OGR) Committee's investigation in a simple, yet comprehensive, way. The video reports on the OGR Committee's findings related to its investigation of the IRS targeting conservative groups applying for tax-exempt status.
2. Work on the video started on or around July 7, 2015 and concluded on July 27, 2015. OGR Committee staff spent approximately 100 hours creating the video.
3. No
4. OGR Committee staff used publically available audio and video clips and Committee documents. These sources included:

Video footage: C-SPAN, C-SPAN 2, C-SPAN 3, MSNBC, Fox News, CNN, YouTube, OGR hearing room, screenshot of Google Maps.
Photos: Google Images
Other images: IRS website, Wikipedia, document productions, committee photos.
Documents: Scanned versions of OGR Committee letters or subpoenas.
Voiceover: OGR Committee staff
Soundtrack: Licensed from musicbed.com
5. The picture is a stock photo of a hard drive.
6. Images were changed to black and white using Adobe Premiere Black and White effect.
7. All materials used to create the video are from publicly available sources online, including the OGR Committee's website.
8. No