DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

May 23, 2016

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your letter of May 18 inviting me to testify at the Judiciary Committee hearing on May 24 regarding the Committee's inquiry into allegations made against me in my role as IRS Commissioner. I thank you for extending me that courtesy, and for affording me the opportunity to provide the Committee with information in response to the issues raised by some Members of the House. I have the deepest respect for you and for this Committee, and recognize your Committee's responsibility to carefully evaluate these allegations.

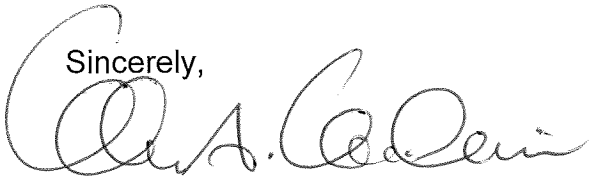
When the Committee announced this hearing, I was returning from a week in China where I met with the tax administrators of 43 nations to discuss international tax avoidance issues. As a result, since I returned, my schedule has been more crowded than usual, including preparations for a previously scheduled hearing before the House Ways and Means Committee on Wednesday, May 25. Therefore, the short notice provided has left me without sufficient time to prepare to appear in person on Tuesday for what could be a wide-ranging and complex discussion regarding claims that may only become clear after the hearing's first panel. Thus, while I must regrettably decline your invitation, I remain willing to appear before the Committee in the future.

In the meantime, if you think it is appropriate and helpful to include in the record at this time, I enclose an initial statement summarizing why the allegations against me lack merit. I think this information may also be useful to witnesses at the second hearing you have announced for June with outside experts.

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Should the Committee choose to undertake further steps, I hope that it will do so in a manner consistent with the House's longstanding concern for, and provision of, the due process that must attend such a serious course of action. I would be pleased to talk with you further at your convenience.

Sincerely,



John A. Koskinen

cc: The Honorable John Conyers, Ranking Member, Committee on the Judiciary

Enclosure

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WRITTEN STATEMENT OF
JOHN A. KOSKINEN
COMMISSIONER
INTERNAL REVENUE SERVICE
BEFORE THE
HOUSE JUDICIARY COMMITTEE

FOR ITS HEARING: EXAMINING THE ALLEGATIONS OF MISCONDUCT AGAINST IRS COMMISSIONER JOHN KOSKINEN, PART I
MAY 24, 2016

INTRODUCTION

Chairman Goodlatte, Ranking Member Conyers and Members of the Committee, thank you for the opportunity to provide a summary statement for the record in connection with your review of the allegations by some Members of the House Oversight and Government Reform Committee. I hope this summary statement is helpful as you consider whether to initiate a more formal inquiry. I stand ready to cooperate with your Committee with regard to any actions it deems appropriate.

I have great respect for our institutions of government, including the United States Congress and each of its Members. When I began my service as Commissioner of the Internal Revenue Service, I took over an agency under investigation by six different bodies and buffeted by ongoing, serious controversy. I regret that, in the period since then, we have not been able to bring these matters to a conclusion satisfactory to all Members of this distinguished Body, including those who are testifying today before you.

I believe the allegations you will hear described today, and the related House Resolution are without merit, for reasons summarized below. But I also acknowledge the strong feelings that are held by some Members regarding this matter, as well as their understandable frustration with the document production and retention challenges of our agency during the past several years. I also understand their deep concern regarding the actions that gave rise to these controversies – conduct that ended long before I arrived at the IRS. I am committed to continuing to make improvements and working with all committees and Members of Congress during my tenure as Commissioner, and I sincerely hope that, over time, trust and goodwill on all sides will be restored.

BACKGROUND

Let me begin by noting that I never sought the position of IRS Commissioner, which I have held since December 2013. After concluding my work as Non-Executive Chairman of Freddie Mac, having been asked to undertake that role in the wake of the financial crisis by President George W. Bush's Administration, I

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was happily retired. I served on the boards of two large, publicly-traded companies and tried to keep up with my grandchildren. But I agreed to serve when approached by the current Administration in May 2013, because I have a longstanding commitment to public service, and because I understand the importance of the IRS to the government and the nation. The IRS collects more than 90 percent of the revenue that funds the operations of the Federal government, and the agency's activities touch virtually every American.

When I came to the IRS, I knew no one who worked at the agency, and to this day I have never met or spoken to former IRS Director of Exempt Organizations Lois Lerner. By the time I was confirmed as Commissioner in December 2013, six investigations were already well underway in response to the May 2013 report by the Treasury Inspector General for Tax Administration (TIGTA) regarding the use of improper criteria to process applications for tax-exempt status under section 501(c)(4) of the Internal Revenue Code.

It should be noted that organizations applying for 501(c)(4) status at that time did not need a determination from the IRS to undertake their activities. Until last December, when Congress passed the Protecting Americans from Tax Hikes (PATH) Act – which requires 501(c)(4) organizations to advise the IRS when they begin activities – any entity could operate as a 501(c)(4) simply by filing the annual information returns required by the IRS. Nonetheless, those organizations had a right to a determination if they sought it, and the IRS had an obligation to provide that determination promptly and efficiently. Early in my tenure, I apologized to all groups who experienced inordinate delays and complications in the review of their applications.

My goal from the start has been to respond as quickly and completely as possible to inquiries from any of the six investigating entities, to help them develop recommendations that would in turn assist us in ensuring that the management failures described in TIGTA's May 2013 report would never happen again.

My previous experience in government helped me to understand the importance of complying with such investigations. Earlier in my career, I spent four years as Chief of Staff to former Sen. Abraham Ribicoff, who served as Chairman of a subcommittee of the Senate Governmental Affairs Committee and, ultimately, as Chairman of the Committee. The Committee held hearings on a variety of important issues, and my involvement in those hearings impressed upon me the importance of Congressional oversight of the Executive Branch, and the responsibility of agencies to respond as quickly and completely as possible to requests for information from Congress.

In response to the May 2013 TIGTA report, the IRS accepted and implemented all of the Inspector General's recommendations, with one exception. The only recommendation we have not completed involves clarifying how to measure the

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social welfare and political activities of section 501(c)(4) organizations. Before I became Commissioner, the Treasury and the IRS drafted proposed regulations on this issue for public comment. The regulations proved to be very controversial and provoked over 160,000 comments. I suggested that we start over, taking into consideration the range of comments provided and emphasizing that our goal was not to change the basic, existing rules but, instead, to clarify them as recommended by the TIGTA report. We were instructed by Congress in December to halt our work in this area, which we have done.

TIGTA reviewed our actions in response to the May 2013 report, and issued a follow-up report in March 2015 that noted the IRS had taken "significant actions" to address their recommendations. We also accepted and implemented their additional suggestions.

In August 2015, another of the six investigating entities, the Senate Finance Committee, concluded its two-and-a-half year investigation with an exhaustive report. As I testified to the Finance Committee in October last year, the IRS accepted all the recommendations in the Committee's report that were within our control – those that did not involve tax policy matters or legislative action. They included 15 of the report's 18 bipartisan recommendations. We also accepted and have implemented all of the recommendations within our control in the separate reports prepared by the Majority and Minority of the Committee.

In addition to the Senate Finance Committee, the Senate Permanent Subcommittee on Investigations, the Department of Justice (DOJ), and TIGTA have concluded their investigations and their work, with the exception of one historical review being done by TIGTA. None of these entities have indicated any further action or activity is necessary or required.

Despite that, some Members have urged the House to impeach me. Impeachment is, of course, an extraordinary tool, used very rarely by the House after a careful and deliberative process, including, in previous cases, providing substantial due process and other safeguards to the accused individual. These safeguards, which include adequate time to prepare and the right to call and examine witnesses, are not part of this preliminary inquiry. And as described below, I believe impeachment is a wholly improper tool in this instance.

RESPONSES TO THE ALLEGATIONS IN THE PROPOSED ARTICLES OF IMPEACHMENT

As indicated earlier, I believe there is no substance to any of the four charges put forward by some Members of the House Oversight and Government Reform Committee. My responses to these allegations can be summarized as follows:

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Proposed Article I

- The IRS, under my direction, responded to Congressional requests for information with a massive production of documents.
- Both TIGTA and DOJ have determined that the erasure of disaster recovery tapes was an accident.
- No one has even suggested, nor could they suggest, that I was somehow personally involved in the erasure of the tapes.
- The IRS has taken steps to prevent a repeat of the failure to preserve information.

Under my direction, the IRS has responded comprehensively and in good faith to the various subpoenas and document requests from the investigating entities.

Despite historically low levels of funding, the IRS incurred more than $20 million in expenses (and devoted more than 160,000 man-hours) to collect, review, and produce approximately 1.3 million pages of documents. As part of this massive document production, the IRS recovered and produced over 78,000 emails that were sent or received by former IRS Director of Exempt Organizations Lois Lerner, including over 24,000 emails from the period affected by Ms. Lerner's hard drive crash.

The IRS was able to recover such a large number of emails by looking in the places where it believed the emails were most likely to be found: in the email accounts of IRS employees that Ms. Lerner worked with or supervised. The IRS's strategy was to make up for any technical or recordkeeping shortcomings that may have existed by pursuing a broad, even redundant, document collection and review effort.

The erasure of 422 disaster recovery tapes at Martinsburg, West Virginia was clearly a failure of the IRS's document preservation protocols. The IRS accepts responsibility for it, and as detailed in its submissions to Congress, has improved employee training and taken other measures to minimize the risk that anything like this could ever happen again. However, both TIGTA and DOJ agreed that the erasure was an accident. As TIGTA stated in its investigative report, its extensive interviews "provided no evidence that the IRS employees involved intended to destroy data on the tapes or hard drives in order to keep this information from Congress, the DOJ or TIGTA."

Proposed Article II

- I acted in good faith in my efforts to comply with all Congressional requests related to the investigations.
- I testified truthfully and to the best of my knowledge in answering questions concerning the search for, and production of, emails related to the investigations.

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- The IRS only became aware of the accidental erasure of disaster recovery tapes in 2015, after being notified by TIGTA during its investigation of the Lerner hard drive crash.

The allegations that I somehow attempted to deceive Congress are unfounded. On June 20, 2014, I testified to the House Ways and Means Committee that "since the start of this investigation, every email has been preserved...." That was my honest belief at the time, as I was not yet aware of the Martinsburg erasure.

I only became aware of the erasure in 2015, after TIGTA briefed the IRS on the matter. On June 23, 2014, I testified to the House Oversight and Government Reform Committee that "backup tapes from 2011 no longer existed because they had been recycled," and that IRS personnel "went back and looked and made sure" of this. This was my honest belief, based on briefings with IRS Information Technology (IT) personnel.

On March 26, 2014, in testimony to the House Oversight and Government Reform Committee, I promised to produce "all of Lois Lerner's emails." As detailed in the discussion above, the IRS made great efforts to produce all available Lerner emails, conducting a broad search at substantial expense. The breadth of the IRS's efforts illustrates the good faith underlying the promise to comply with the Committee's request.

Proposed Article III

- The IRS went to great lengths to cooperate with and facilitate the various investigations into the determination process for tax-exempt status.

The main allegation seems to be that I somehow impeded Congressional investigations by delaying for four months in notifying Congress regarding the Lois Lerner hard drive crash. This is inaccurate. It was never my intent to impede the investigations in any way; to the contrary, the IRS went to great lengths to cooperate with and facilitate the various investigations.

It is important to note that the Lerner hard drive crash was by no means purposely hidden from Congress. Emails discussing the hard drive crash were included in the substantial production of emails to the Congress months earlier, in 2013. Documents provided included a series of emails to Ms. Lerner in 2011 from the IRS IT division discussing the computer problems she experienced with her hard drive crash and IT's efforts to resolve them.

It was not until February 2014 that agency attorneys discovered a problem with Ms. Lerner's emails. The IRS attorneys also did not discover this from the e-mail exchanges that had been earlier provided to the Congress. Instead, the discovery was made when IRS attorneys, who were producing emails for the Congressional committees, noticed an apparent chronological "gap" in the Lerner

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emails that had already been provided to Congress in 2013. After making this discovery, IRS officials worked to assess what happened, determine whether and how data was lost, and study how the data might be recovered from other sources.

I first learned the details of the Lerner hard drive crash in April 2014, and directed IRS personnel to continue the work of determining the extent of the data loss so that a complete description of the problem could be provided outside of the IRS. That work identified 24,000 of Ms. Lerner's emails from the crash period that could be provided to the various investigators. When the IRS completed its assessment of the Lerner email situation in June 2014, we made a full and timely report to the Congressional committees, DOJ and TIGTA.

Proposed Article IV

- I oversaw a broad document collection and review to comply with the investigations.

The gist of this allegation is that I failed to competently oversee the IRS's response to Congressional investigations. There has been no suggestion that I denied IRS personnel the needed resources nor in any other way impeded their efforts to respond to the varied Congressional inquiries. To the contrary, as detailed above, the IRS conducted a broad document collection and review, producing a comprehensive record of the matters under investigation, notwithstanding substantial technical and resource challenges. I received regular reports on the work to complete this effort by IRS lawyers and other personnel. Much of this work was done during my first months on the job. Our goal was to provide TIGTA, DOJ, and the Congressional committees all of the information that they needed to advance and ultimately complete their investigations.

CONCLUSION

While the allegations raised by some Members of the House Oversight and Government Reform Committee are serious and relate to acknowledged errors made by the IRS, the Constitution reserves the use of impeachment for "treason, bribery, or high crimes and misdemeanors." None of my actions relating to the issues above, viewed in light of all the facts, come close to that level.

I would also note that impeachment has been used only on very rare occasions in the 228-year history of our Constitution. Aside from two Presidents, the only impeachment of a member of the Executive Branch occurred in 1876. If the Committee were to go forward and pursue impeachment in this instance, especially in light of the utter lack of support for the allegations, it would set an unfortunate precedent, diminishing the ability of the Federal government to attract experienced, dedicated people to positions of leadership. Some have suggested that my impeachment would be an appropriate means of holding the

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IRS accountable for acts of others that occurred before I came to the agency. This approach would make it particularly hard to attract new leaders when they are needed most – when a critical agency is in crisis following serious mistakes, needing both to reform its practices and respond to investigations. That would be a great loss for the government and for the country.

I want to be clear that, despite being faced with these unwarranted allegations, I remain honored to serve as the IRS Commissioner, and to lead a group of employees who are as dedicated, skillful, energetic and enthusiastic as any group I have had the privilege to work with.

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

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