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RPTS DEAN

DCMN NORMAN

WHITE HOUSE TRANSPARENCY, VISITOR LOGS AND LOBBYISTS

TUESDAY, MAY 3, 2011

House of Representatives,  
Subcommittee on Oversight  
and Investigations,  
Committee on Energy and Commerce,  
Washington, D.C.

The subcommittee met, pursuant to call, at 10:35 a.m., in Room 2123, Rayburn House Office Building, Hon. Cliff Stearns [chairman of the subcommittee] presiding.

Present: Representatives Stearns, Terry, Burgess, Blackburn, Gingrey, Scalise, Gardner, Griffith, Barton, DeGette, Weiner, Markey, Green, and Waxman (ex officio).

Staff Present: Todd Harrison, Chief Counsel; Stacey Cline, Counsel; Sean Hayes, Counsel; Alan Slobodin, Deputy Chief Counsel; John Stone, Associate Counsel; Alex Yerbin, Legislative Clerk;

Carl Anderson, Counsel; Sam Spector, Counsel; Aaron Cutler, Deputy Policy Director; Kristin Amerling, Minority Chief Counsel and Oversight Staff Director; Stacia Cardille, Minority Counsel; Brian Cohen, Minority Investigations Staff Director and Senior Policy Advisor; Karen, Lightfoot, Minority Communications Director and Senior Policy Advisor; Ali Neubauer, Minority Investigator; and Anne Tindall, Minority Counsel.

Mr. Stearns. Good morning everybody. The Subcommittee on Oversight and Investigation of the Energy and Commerce Committee will come to order. And I shall start with my opening statement.

Ladies and gentlemen, we convene this hearing of the Subcommittee on Oversight and Investigations today to gather information concerning the Obama administration's commitment to transparency. While he was a candidate, he repeatedly promised that his administration would be the most open and transparent in American history. He said he would make contacts between the administration and lobbyists more open, and that he would televise health care negotiations on C-SPAN so that people can see who is making arguments on behalf of their constituents, and who are making arguments on behalf of the drug companies or the insurance companies. Those were his words.

The American people were made a lot of promises that, quite frankly, do not seem to have been kept. We are here today to examine the administration's policy on transparency and see what else can be done to ensure that the White House follow through on their own commitments.

Take the White House visitor logs as an example. In September 2009, the President announced a new policy of releasing White House visitor logs to the public. He did this because as he stated, "Americans have a right to know whose voices are being heard in the policymaking process." What the President has failed

to mention is that,

according to an April 18th report by the Center for Public Integrity, the new policy was forced upon the administration in relation to a settlement of four protracted lawsuits against the government seeking such records. A Federal judge ruled that those records are subject to release under the FOIA law. Only 1 percent of the 500,000 meetings from President Obama's first 8 months in office have been released. Only 1 percent. Many of the entries do not reflect who actually even took part in the meetings. Two-thirds of the 1 million names released are people on guided group tours and thousands of known visitors to the White House, including numerous lobbyists, are simply missing from the logs.

Since he announced his policy, new reports have uncovered that the administration officials go to great length to avoid disclosing their meetings with lobbyists. White House staff apparently purposely schedule meetings at the Caribou Coffee around the corner from the White House so that those meetings won't show up on the White House logs. And one executive branch agency even went so far as to require lobbyists to sign confidentiality agreements about their discussions with the administration.

This is not the only area we've seen the administration give lip service to the idea of transparency. We've seen a lack of transparency in the administration's response to FOIA's request. Their secrecy about the work done by some of their key czars, such

as the climate change czar and health reform czar, and more recently they've tried to require selective disclosure of the public political contributions of government contractors but not unions. And our investigation into the secret health care negotiation has been delayed by the administration for more than 1 year.

I understand that my Democrat colleagues may want to relitigate the past and compare this administration with previous ones but, simply, the bottom line is that the American people were promised, were simply promised a new era of openness and accountability and they have not got it.

To learn more about White House policies, we had hoped to hear from the White House themselves and their witnesses. Unfortunately, the White House did not accept our invitation to send a witness. This failure to send any witness to a hearing about White House transparency, while depriving the public of the administration's perspective, is revealing in its own way about the administration's true attitudes.

Even without a witness from the White House, this hearing will be of great value in simply pulling together facts and reports from nonpartisan, independent sources like the ones that are represented by our witnesses, and legitimate concerns arising out of lawsuits brought by groups of different ideologies. From large gaps in the White House logs, to secret meetings with lobbyists, to waivers for lobbyists to serve in the

administration, to broken promises to broadcast all of the health care negotiations on C-SPAN, to the appointment of numerous uncountable czars to confidentiality agreements, to a political litmus test for a government contractor, for the first time a coherent picture of the administration's pattern and record on transparency issues will begin to emerge. And that is what this hearing is all about.

[The prepared statement of Mr. Stearns follows:]

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Mr. Stearns. With that I yield to the ranking member the gentlelady from Colorado, Ms. DeGette.

Ms. DeGette. Thank you very much, Mr. Chairman. Concern about open government and transparency it is not new to this committee, this Congress, or this administration. That's why I want to start by quoting a set of minority views to a committee report concerning Bush administration open government practices that I signed in 2004. "These principles are important elements of a democracy. They represent basic principles of good government that transcend administrations, partisan politics, and the politics and issues of the moment."

Open government practices are integral to ensuring public confidence and respect for government institutions, and Congress has a duty to conduct vigilant oversight to ensure sunshine in the executive branch, regardless of which political party controls the Presidency.

I am pleased that President Obama has prioritized transparency and has acted to back up these promises. On his first full day in office, the President announced the administration's commitment to creating an unprecedented level of openness in the government. In January 2009, the President reversed the Bush administration's policy regarding the Freedom of Information Act, instructing agencies to adopt a presumption in favor of disclosure.

Under President Obama, every administration agency has accomplished an open government plan. The administration has created new ethics rules that prevent lobbyists from working in government or sitting on government advisory boards. They've launched data.gov, a Web site that makes economic, health care, environmental, and other information available on line. They've created a new on-line access to White House staff financial reports and salaries, and taken numerous other steps to provide the public with information about their government.

In September 2009, the President ordered a new policy of posting secret security records that track visitor entries to the White House. This is an unprecedented and voluntary step that is not required by any open-government law. The Obama administration has a strong transparency record and, frankly, it is perfectly appropriate that Congress conduct oversight of these policies and look into whether these policies are in fact being followed. But the manner in which this particular hearing has been called gives me, frankly, pause.

If the committee wants to fully understand White House policies and practices it makes little sense to have a hearing without a White House representative present, as the chairman said. But in this case, the committee announced the hearing only 1 week in advance and gave the White House only 6 days' notice to produce a witness. The White House had already committed to providing a witness at a hearing simultaneously, occurring at this

moment before the Oversight and Government Reform Committee on the same topic, and so was unable to provide a witness today for this committee under the short notice provided by the majority.

Nonetheless the majority decided to go ahead and have a hearing. Without a White House witness and with no tangible allegations of misconduct, it appears that we're not holding a hearing to gather facts but, rather, to provide a forum for members to air allegations about the White House.

Now, unfortunately, this would be an unnecessarily partisan use of the oversight process. It would tragically not be the first time, though, that members of this committee engaged in partisan politics with regard to the White House transparency issues. In 2004, a date that Mr. Waxman and I remember well, Republicans on the committee took extraordinary measures to prevent us from obtaining basic information about interaction between the Bush White House and outside parties in developing energy policy, the same kind of information this committee has requested and already received from the Obama administration. Early in 2001, Vice President Cheney chaired a task force forum to develop energy policy.

In April 2001, Representatives Dingell and Waxman asked the Vice President to disclose who was meeting with the task force, and at their request the nonpartisan GAO asked the White House for the same information. The Bush administration took the position that the formulation of energy policy by the task force was beyond

any oversight. Republican leaders of this and other committees refused to have hearings or support inquiries into the transparency of the task force. After years of White House intransigence, Representative Dingell in 2004 introduced a resolution of inquiry. And that came to this -- the full committee, the full Energy and Commerce Committee. Every Republican on this committee, including the chairman, voted to block access to the information.

During consideration of the resolution, the then-committee chair denied Democrat members the right to speak or debate the resolution. Mr. Waxman and I each offered separate unanimous consent motions to provide for debate time on the motion, and they were both voted down. And so really, we don't need this kind of partisanship. Either we have disclosure or we don't. Either we have rules or we don't. So if we want to look at disclosure, let's get serious, let's look at disclosure and let's not spend time just being partisan. I don't think that's a good use of this subcommittee's time, Mr. Chairman.

Mr. Stearns. Thank you, gentlelady.

[The information follows:]

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Mr. Stearns. I would point out as you know, Cass Sunstein came here with 1 week's notice from the administration. And I would also point out to the gentlelady that the rules of the committee are that 1 week is all we have to give.

Ms. DeGette. Right, except for there is another hearing going on in another committee on this same topic. That's the problem.

Mr. Stearns. I respect your opinion. Towards that end, I ask unanimous consent to move this supplemental memo into the record, which I think your staff has seen. Is there any objection?

Ms. DeGette. Mr. Chairman, if we can have just a few more minutes to review it, we only received it 5 minutes before the hearing.

Mr. Stearns. Absolutely, absolutely. And we have 5 minutes on our side; and to use 2 minutes, Dr. Burgess is recognized for 2 minutes.

Dr. Burgess. I thank the chairman for the recognition. In 2009 I became concerned and attempted to obtain the names of health care industry officials who met with the administration in the lead-up to the passage of the new health care law. This information has been withheld by the White House, despite statements that they would be the most transparent administration in history. The information would simply disclose with whom the

administration was meeting. We did not ask for sensitive national security information. This stalling forced me to file a resolution of inquiry in the last Congress and we are still waiting for those facts.

We were told by the White House counsel there was nothing written down at these meetings. But you'll recall a photo op after those meetings occurred where the President came out and said that there was broad agreement to save \$2 trillion to pay for health care reform; \$2 trillion, and no one even jotted down a note on the back of an envelope? I find that strange credulity.

This hearing today, seeking to promote transparency in government, the White House did decline to send a representative. So what's more pressing for the director of the White House Office of Management Administration when one of its chief duties should be to foster transparency? Perhaps they will disclose who they were meeting with instead of meeting with this committee.

In March, the response by the White House to our committee request for visitor information, we were told that our request would be a vast and expensive undertaking. I don't think it is too vast to disclose what should be public information. Further, the fact that this information is described by the White House as "vast" means that the administration met with more people than was originally thought.

Withholding of information is in direct contradiction to the transparency. And the measures that were taken to limit

information on the logs is actually quite ironic, given the fact that when campaigning for the Presidency, Candidate Obama did promise the most transparent administration in history.

There have been reports that the administration routinely conducts meetings at coffee shops to evade visitor logs. Look, it's really hard to bug the White House, but it's probably not hard to bug Caribou Coffee. This should worry every person who is connected with the administration that this is the way -- this is the way they have chosen to conduct business in order to avoid any scrutiny or oversight by the United States Congress.

Thank you, Mr. Chairman, I'll yield back.

Mr. Stearns. The gentleman's time is expired.

[The information follows:]

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Mr. Stearns. The gentlelady from Tennessee, Ms. Blackburn, is recognized for 2 minutes.

Mrs. Blackburn. Thank you, Mr. Chairman, and thank you for holding the hearing today on these issues of transparency at the White House. I was truly disappointed to learn that Mr. Brad Kiley, from the White House Office of Management Administration, was unable to join us today to allow for this committee to fully extend its constitutional obligation to provide checks and balances through reasonable oversight.

In talking about lobbyists and general access to the most powerful office in the world, it is important to discuss the responsibilities that key decision makers in the executive branch have.

An issue some of my constituents raised with me is the proliferation of czars, specifically those who function with political power and level of responsibility traditionally only designated for Senate-confirmed Cabinet Secretaries. Since these czars aren't subject to congressional oversight, we have little information on their background and how their background influences policy.

My concurrent resolution H.C.R. 3 would allow for greater oversight of these powerful bureaucrats. My colleague, Mr. Scalise, shares my concerns in light of the President's signing statement last month nullifying section 2262 of the budget

compromise that prohibited using appropriations for salaries and expenses of certain White House czars.

While the President promised that he would not use signing statements, he is legally permitted to do so. The implication of this action is that it fundamentally undermines the transparency the American taxpayer is entitled to, and they make certain that we should follow up on this.

I look forward to today's testimony and to working closely with you to promote openness and transparency and I yield the balance of my time.

Mr. Stearns. The gentlelady yields the balance of her time.

[The information follows:]

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Mr. Stearns. And the gentleman from Georgia, Mr. Gingrey, is recognized for 1 minute.

Dr. Gingrey. Mr. Chairman, thank you. The hearing today really is all about asking the question, if this President truly has fulfilled his campaign pledge -- that being to have the most open and transparent administration in history but certainly much more open and transparent than the previous administration -- that's what it is all about. That's why you on this side of the aisle, you will hear a lot of Members say, you know, I agree with 85 percent of what the President says, I disagree with 85 percent of what the President does. He's not following through.

We can name specifics, and some of my colleagues have done that, but the bottom line is that we are having these witnesses here today and, unfortunately, not one from the administration. I don't know why Mr. Kiley couldn't copy the notes of the administration designee going to Government Oversight and Reform. That would have been particularly easy; he could have shared that with us. Maybe he was involved in capturing and killing Osama bin Laden, but I doubt it. And he had plenty of time to be here. It's disappointing that he's not here. But these witnesses will help us understand exactly what has been done and what has not been done. This business, like Dr. Burgess says, of having meetings, trying to avoid documentation and recordkeeping of visitors at the White House, across the street at Caribou or

Burger King or whatever is a real security issue. So this is a very important meeting. I thank the chairman and I yield back.

Mr. Stearns. I thank the gentleman.

[The information follows:]

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Mr. Stearns. And I yield 5 minutes to Ms. DeGette.

Ms. DeGette. Mr. Chairman, we have no objection to the revised --

Mr. Stearns. By unanimous consent, the memo will be made part of the record.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Ms. DeGette. And I would yield our additional 5 minutes to Mr. Waxman.

Mr. Stearns. The gentleman, the distinguished ranking member is recognized for 5 minutes.

Mr. Waxman. Mr. Chairman, today's hearing addresses an important subject. I've long been a proponent of transparency in the executive branch. Transparency improves decision making, it makes government more accountable, it produces better results.

But I must say it's hard to take this hearing seriously. You want to find out the facts, and yet you wouldn't give the administration more than 6 days' notice to come in and present their case -- they said they didn't have enough time and they had a conflict in the schedule -- rather than give them the courtesy of holding this hearing a little later? The hearing is being held, it seems to me, more to give Members on the Republican side of the aisle an opportunity to say, "They didn't come, they wouldn't come."

Oh, please, give me a break. What we see here is a pattern by this committee. We should have an administration witness here to testify, but this wasn't the fault of the White House. The chairman even said we gave them 6 days' notice; that's all we need to give them. What kind of thinking is that? If you want them here, you try to accommodate people's schedules. Instead of rescheduling the hearing so we could hear from an appropriate

White House official, the majority decided to proceed today without a White House witness.

This is not the first time this happened on a committee this year. In April, other Energy and Commerce Subcommittees held three hearings on EPA actions. In these cases the committee also gave short notice to the administration and this resulted in EPA being unable to testify at some of the hearings.

The committee should not be holding hearings without essential witnesses. It's not a good use of the committee's time. But I don't think this committee's time is being devoted to the important issue of transparency. This committee is devoting time to politics.

Now, let's look at the previous administration. The Bush administration -- and I was very highly critical of their policies on transparency, because Vice President Cheney met secretly with energy lobbyists and we couldn't even get the list of lobbyists with whom he had meetings. The administration used pseudo classifications like "for official use only" or "sensitive," but unclassified, to keep embarrassing information from the public.

And we exposed the use of RNC, that's the Republican National Committee e-mail accounts, by senior Bush administration officials that circumvented the Presidential Records Act.

Our ranking member, Ms. DeGette, went through some these things; how Cheney tried to keep us from getting the information and how this committee and every Republican tried to keep us from

getting information about the assessment of the administration on the Part D Medicare costs. We tried to get that information and we were frustrated.

To his credit, President Obama has taken important steps to increase transparency in the White House. They reversed the number of decisions by former President Bush and made it harder to get information about executive branch officials.

In September of 2009, the President announced the voluntary disclosure of White House visitor records. This is a voluntary disclosure. He established new policies to make it easier for citizens to get information through the Freedom of Information Act. And his open government initiative made an unprecedented volume of information available to the public. They established new ethics rules to prevent special interests from having undue influence.

Well, I think they have a good record on transparency. No record is without challenge; we can always get better. But I don't think the proponents of open government should rest. We should use this hearing to examine additional steps that can be taken to increase transparency.

I just heard from Dr. Burgess that he wanted to hear about the discussions at the White House with the different health groups. Well, we knew those meetings were taking place. It was reported in the press. The White House has their logs; we know who came. It wasn't for open government, it was for national

security, but we got the information from those logs.

The committee not only is unsatisfied with being able to accommodate the White House to allow them to give testimony, they are now trying to get all these private groups with the White House to disclose all the e-mails that they have, all the conversations they had internally, to try it find out exactly what everybody said to whom.

Now, I find that quite troubling when people have a right to go to their government, whether it is the White House or the Congress, and talk about their concerns, their legislative concerns. They shouldn't be intimidated by trying to get information that may have nothing to do with that. It goes to a broad fishing expedition when you ask for such extensive information.

But nevertheless, I can't take this hearing seriously. I don't think the Republicans want open government. They just want another chance to use their power to whack this administration and the Democrats. And if that's their idea of oversight, we are seeing a good example of it today.

Mr. Stearns. The gentleman yields back.

Just a point of information for the gentleman. The Government Oversight had a hearing this morning, starting at 9:30. They asked for Brad Kiley, the same person we asked for, who is the Director of Management Administration. He sent a designee to that committee, the Government Oversight, but he did not send one

to us, which disappointed us. So I just would point out that he obviously wants to be transparent, he could have sent a designee.

With that, let us take care and have the first panel start. We have three witnesses. We appreciate your coming here. We have Mr. Tom Fitton, he's President of Judicial Watch, the public interest group that investigates and prosecutes government corruption. It was founded in 1994. Judicial Watch is a foundation that promotes transparency, accountability, and integrity in government politics and the law.

We have Mr. John Wonderlich. He is the policy director of the Sunlight Foundation, one of the Nation's foremost advocates for open government. John spearheads Sunlight's goal of changing the government by opening up key data sources and information to make government more accountable to its citizens.

And Ms. Anne Weismann serves as CREW's chief counsel. CREW's stated mission is to use high-impact legal action to target government officials who sacrifice the common good for special interests.

I welcome our three witnesses today. As customary, I want to thank them for coming. The committee rules provide that members have 10 days to submit additional questions for the record.

Let me address the three of you today. You're aware the committee is holding an investigative hearing and when doing so has had the practice of taking testimony under oath. Do you have any objection to taking testimony under oath?

The Chair then advises you that under the rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today?

In that case, if you'd please rise and raise your right hand, I will swear you in.

[Witnesses sworn.]

Mr. Stearns. You're now under oath and subject to penalties set forth in Title 18, section 1001, of the United States Code.

**STATEMENTS OF TOM FITTON, PRESIDENT, JUDICIAL WATCH; JOHN WONDERLICH, POLICY DIRECTOR, SUNLIGHT FOUNDATION; AND ANNE WEISMANN, CHIEF COUNSEL, CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON (CREW)**

Mr. Stearns. You may now give a 5-minute summary of your written statement. Mr. Fitton.

#### TESTIMONY OF TOM FITTON

Mr. Fitton. Thank you, Chairman Stearns and Congressman DeGette, for hosting this hearing and allowing me to testify on this important topic. Judicial Watch is without a doubt the most active and Freedom of Information Act requester and litigator operating today. And we've been pursuing this during the Clinton administration, during the Bush administration, and obviously during the Obama administration.

The American people were promised a new era of transparency by the Obama administration and, unfortunately, this promise is not being kept. To be clear, the Obama administration is less transparent than the Bush administration. We filed over 325 FOIA requests with the Obama administration and have been forced to sue over 45 times to gain access to documents. And obviously lawsuits don't necessarily guarantee access to documents, but they put you a little bit further along than you otherwise would be if you relied on their good graces to turn documents over.

I would like to talk a little bit about the visitor logs. In fact, the Obama administration is refusing to release, contrary to the Freedom of Information Act, tens of thousands, now according

to this recent report, hundreds of thousands of visitor logs and insist citing a Bush administration legal position that the visitor logs are not subject to the FOIA act.

So while the Obama administration attempts to take the high ground by releasing a select number of visitor logs, it shields hundreds of thousands of others in defiance of FOIA law. In the fall of 2009, specifically Norm Eisen, invited us to visit with them to talk about the White House visitor logs.

The White House encouraged us to publicly praise the Obama administration's commitment to transparency, saying it would be good for them and good for us. However, they refused to disclose these records as required to under the Freedom of Information Act, and we were forced to sue to enforce the law.

To date, every court that has reached this issue has concluded that the White House Secret Service visitor logs are agency records and must be processed in response to properly submitted FOIA requests. In fact, we have received FOIA Secret Service logs from the Bush White House until they decided to stop doing that with my colleague from CREW.

Now we know, as the committee has noted, that in order to avoid further disclosure of meetings with lobbyists, there are meetings across the street at Caribou Coffee shop and in the White House conference center. We are investigating to see whether we can get records from that conference center. And other investigators at the Center for Public Integrity have further

confirmed what Judicial Watch has long known; that the visitor logs voluntarily disclosed by the White House are little more than a data dump, full of holes that shield rather than shed light on visitors and their business at the White House.

On major issue after major issue, FOIA is ignored by this administration. And specifically of interest to this committee perhaps, we have yet to get one document, despite asking months ago and suing in Federal court over their issuance of the waivers to ObamaCare. To me -- that to me is a very cogent instance of their disregard for the Freedom of Information Act.

And with regard to the lobbyists, the difference between this administration's rhetoric and its practices is that they promised no lobbyists in the White House, the Washington Examiner examined at least -- and found at least 40 lobbyists hired by the Obama White House. And they promised they would end the revolving door in terms of lobbyists going into the White House and out by inserting into their ethics pledge a promise not to work on issues that your former clients or others had worked on prior to your working in the White House if you're an agency appointee or White House appointee. Yet they have waivers of these ethics requirements.

Only in Washington can you get away with the phrase "ethics waivers," can you waive ethics. This is the Obama White House's approach to transparency. They have 32 ethics waivers which allow lobbyists who were hired as White House or administration

officials to work on work that they had worked on when they were lobbyists just shortly before they had been hired. We now note that the New York Times has reported that the White House has asked lobbyists looking to work there to deregister as lobbyists to avoid this issue.

How does that comport with transparency, accountability, and integrity? This ethics gamesmanship undermines the rule of law and makes one think that this administration has something to hide. You know, this ought to cut across partisan and ideological lines. Judicial Watch, to be clear, pursued the Bush administration without fail on these transparency issues. We took the administration all the way up to the Supreme Court over this energy task force issue. We fought with them over releasing contracting information about Halliburton that was tied to the Vice President. Many of the documents we uncovered were used by opponents of the Bush administration to attack them.

So we approach this from a nonpartisan fashion. We're conservative; but I don't think conservatives or liberals, there should be any daylight between them on transparency and open government. Thank you.

Mr. Stearns. Thank you.

[The prepared statement of Mr. Fitton follows:]

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Mr. Stearns. Mr. Wonderlich.

#### TESTIMONY OF JOHN WONDERLICH

Mr. Wonderlich. Thank you, Chairman Stearns, Ranking Member DeGette, and members of the subcommittee for the opportunity to testify here today.

My organization, the Sunlight Foundation, was as enthusiastic as anyone when in September 2009 the White House announced that they'd begin releasing data from the visitor log system on line. And in the 18 months or so since that policy was first announced, the disclosure of the visitor logs has become a symbol for White House openness through both media accounts and frequent commentary from administration officials. Releasing information about who visits the White House has been described as both historic and disappointing, and the truth lies somewhere in between.

The White House frequently points to the logs as evidence of their commitment to transparency, causing even greater scrutiny of their effectiveness. But ultimately the system that the White House is describing as a disclosure system was designed as a security system. Nevertheless, the visitor logs data have proven to be a valuable source for some journalism. Perhaps most notably, my colleague Paul Blumenthal of the Sunlight Foundation wrote a broadly acclaimed piece on the health care negotiations

between health care lobbyists and the White House which used the visitor logs data extensively.

Now, some of the limitations of the visitor logs, though, are simply artifacts of how this was designed to function as a security system and not as a disclosure system. From the time the visitor logs were first released on line, the White House was explicit about how the records release would work. The stated policy lays out broadly defined exceptions to what kind of visitors records are withheld. By and large, these exceptions are reasonable. The White House doesn't release personal information like birth dates or particularly sensitive meetings like those of the Supreme Court nominees. Of course, these exceptions could all be abused or ignored, since this was a self-imposed policy. So to ensure continuity with true future administrations and to strengthen the disclosure, Congress should require disclosure of the White House visitor logs and codify these requirements into law.

But ultimately, the most significant limitation of disclosing the visitor logs comes because they only record information for people who access the White House through the WAVE system. As everyone has noted, there have been numerous reports of meetings scheduled in the White House conference center or in coffee shops near the White House. In effect, these meetings circumvent disclosure enabled through the visitor logs policy.

This shouldn't be a surprise, however. Information creates

political power and administration officials who regularly avoid lengthy e-mail exchanges are, of course, going to default towards venues that have no accompanying political liability. Visitor logs records will never encompass offsite meetings, telephone calls, or e-mails.

For comprehensive disclosure of who's influencing the White House, the visitor logs are ultimately not the best tool for the job. The policy of releasing the visitor logs is still a good one and Congress should be involved in strengthening it and making it permanent. But that policy ultimately cannot live up to our expectations, because we are treating it as though it's a replacements for lobbying disclosure.

Congress should examine and craft new disclosure laws that are strong enough to move at the pace of influence that they are intended to expose. Lobbying disclosure laws should require realtime on-line disclosure of paid lobbying efforts and apply to both Congress and the executive branch. Most urgently, the threshold for who should register as the lobbyist must be dramatically expanded, and reporting of lobbying activities should be reported on line in real time.

Despite their shortcomings, the visitor logs released by the administration have provided a meaningful view of influence within the White House, and perhaps just as importantly, have shown us how far we have to go to create meaningful disclosure of influence in Washington. Thank you.

Mr. Stearns. I thank the gentleman.

[The prepared statement of Mr. Wonderlich follows:]

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Mr. Stearns. Ms. Weismann, if you don't mind, just pull the mic down a little bit and speak into it. That's good.

#### TESTIMONY OF ANNE WEISMANN

Ms. Weismann. Mr. Chairman, Ranking Member DeGette, members of the Committee, thank you for the opportunity to testify today about White House visitor logs and lobbyists.

As mentioned, I am chief counsel for Citizens for Responsibility and Ethics in Washington, or CREW, the plaintiff in the litigation that led to the White House decision to voluntarily post White House visitor logs on line.

And by way of background, prior to joining CREW I worked at the Justice Department for about 20 years, including defending government information litigation. No one has a greater or more vested interest than CREW in ensuring that the White House follows through on its commitment to make the White House visitor records publicly available. Although recent new accounts have suggested otherwise, the White House has lived up to that commitment.

Some complain the logs lack critical information such as whom the visitor is meeting with and that requests for clearance were made by low-level staff in order to conceal the true nature of the visit. These criticisms reflect the fundamental misunderstanding of the nature of these logs and the purpose they serve. They are

not the equivalent of calendars or date books. And as every court to address this issue has found, they are the records of the Secret Service, not the President.

The Secret Service creates these records to further its statutory mission to protect the President, Vice President and their families, which necessarily extends to protecting the White House complex. Because they are created for that purpose, they contain only that information the Secret Service needs to ensure no visitor to the White House poses a risk to the safety or security of any of its occupants. That information includes identifying information about the prospective visitor, name, date of birth, Social Security number, as well as the dates, time, and location of the planned visit and the name of the White House passholder requesting clearance.

Simply stated, in performing its protective function, the Secret Service does not need the identity of the individual or individuals the prospective visitor is seeing from a security standpoint. It is therefore not surprising that many of the posted visitor logs do not identify the White House's individual with whom the visitor had an appointment. Nor is it surprising or should it be troubling that top White House officials, such as the Chief of Staff, did not personally perform the ministerial task of requesting clearance for their visitors.

The Secret Service requires only that the person requesting clearance be a passholder, able to provide the required

information. Moreover, the nature of the information in the Obama White House visitor logs mirrors that of previous administrations, including the frequent omission of such details as the identity of the person with whom the visitor has an appointment, which reinforces the central point, that these are Secret Service records that the Secret Service uses and creates to perform its protective function. They are not an analog to appointment calendars and date books that individual White House officials might keep.

To be clear, CREW very much disagrees with the legal position of the White House that these records are Presidential and therefore not publicly accessible under the FOIA.

Nevertheless, we settled our litigation, which began under the Bush administration and continued through the Obama administration, when the White House offered to not only provide CREW with its requested records, but to post on the White House's Web site on an ongoing basis nearly all visitor records, subject to very limited and reasonable expectations.

Again, the disappointment many feel stems in part from the inherent limitations of these records, what they do and do not do. I think it's important to note, however, as my colleague Mr. Wonderlich did, that they are still of value. They reveal, for example, the kind or level of influence an individual visitor might have.

Beyond making White House visitor logs accessible, the

administration has launched some other directives that we have discussed in my testimony. I do want to stress that while we support these efforts, such as the open government directive and the FOIA memoranda that the President issued in his first full day in office, followed up by Attorney General Eric Holder's memo on FOIA 3 months later, these are only a first step. And we remain disappointed that the government as a whole has yet to achieve the goals of transparency and accountability that the President has set.

There remain very real challenges and the commitment has yet to trickle down to the agency staff charged with implementing open government directives such as the FOIA. I defer to the committee for the rest of my testimony. I'm happy to answer any of your questions, thank you.

Mr. Stearns. I thank you, Ms. Weismann.

Just for the edification of the members here, CREW stands for the Citizens for Responsibility and Ethics in Washington.

[The prepared statement of Ms. Weismann follows:]

\*\*\*\*\* INSERT 1-4 \*\*\*\*\*

Mr. Stearns. Before we start, I ask the ranking member unanimous consent that the contents of the document binder be introduced into the record and authorize staff to make any appropriate redactions.

Ms. DeGette. No objection.

Mr. Stearns. Without objection, so ordered.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Stearns. I also want to thank the witnesses, and the committee rules provide that members have 10 days to submit additional questions for the record and also provide their opening statements.

Before I start. I would say to the witnesses I just urge all of you to be as direct as you possibly can in your answers. Some members will ask a question that requires a yes or no, and ask that you limit your yes or no to those questions. And I appreciate your understanding so we have a limited time for each of us.

Before we begin, I would like to show a video. It is a collection of the President's promises about conducting the negotiations over health care reform in public. So if you can please watch this video.

[Video shown.]

Mr. Stearns. So you can see from this video that he was making a promise to the American people to have open, public, televised government. He went out of his way during the campaign to criticize the process that was taking place here in Washington, and I think our focus here today is to show really what he talked about did not come about. We can't even get the exact records of who went to the White House.

Before I start, Mr. Fitton, he mentioned that there were 32 waivers. You mentioned that. Were they issued by the White

House, including the President? Is that true?

Mr. Fitton. Yes, it is true.

Mr. Stearns. And who makes ultimately the decision to give these waivers to the czars and lobbyists that come into the administration?

Mr. Fitton. I think the decision is made by a variety of individuals. If it's in the White House, I think it is granted by then the ethics czar Norm Eisen or White House counsel.

Mr. Stearns. Does the President of the United States have to approve his ethics violation waivers?

Mr. Fitton. I don't know whether he approves it personally or not.

Mr. Stearns. So the President gets involved at all, do you think?

Mr. Fitton. You know I -- for instance the lawyer, the White House counsel, had a waiver approved for his dealings with the DNC. He used to be DNC chair. I would assume the President had some knowledge of that, but I don't know.

Mr. Stearns. I think directly the President would make that decision. So the President himself is issuing a waiver for his counsel in dealing with a political organization; is that correct?

Mr. Fitton. I don't know that to be true. I would assume he would have approved it, though.

Mr. Stearns. And there is nowhere, is there, constitutionally that allows him to make this waiver on his own?

Mr. Fitton. Well, he had issued an executive order detailing this pledge related to not working on work that affected your former clients. Within that ethics pledge is an ethics waiver that is repeatedly invoked, as I mentioned.

Mr. Stearns. Which would be in direct contradiction to what he said, by what his actions indicate; would that be true?

Mr. Fitton. Yes.

Mr. Stearns. Both you and Mr. Wonderlich are familiar with the visitor logs that have been released by the White House and you're familiar with the Center for Public Integrity reports that evaluated these logs; is that correct?

Mr. Fitton. Yes.

Mr. Stearns. This report says, "The logs are incomplete for thousands of other visitors to the White House, including lobbyists, government employees, campaign donors and public policy experts." That's your quote.

Why do you think the White House would withhold so many meetings with lobbyists, particularly in light of what we see the President say during the campaign trail? Either one of you.

Mr. Wonderlich. Well, when they describe them as incomplete --

Mr. Stearns. Just take the mic and move it a little closer to you, if you can. That would be helpful.

Mr. Wonderlich. When they say that they are incomplete, I'm not sure that that means that the White House is withholding them.

The CPI --

Mr. Stearns. Okay, good point. So it is yet to be determined whether withholding -- just the fact that we can't get them, we can't conclude that they are withholding them. But isn't that contrary to the stated purpose of the White House, which is basically they are withholding information meetings related to national security or, shall we say, extremely sensitive, confidential matters? Wouldn't this be contrary to what they indicated they would do with their transparency policy?

Mr. Wonderlich. I think it is in line with how they said it would work, but we would like to see oversight to make sure that those standards are applied appropriately.

Mr. Stearns. Do any of you know about the Center for Public Integrity reports that they have not put out any information that deals with this? Do any of you know about that, either one of you?

Mr. Fitton. In terms of the records being withheld? We don't know. They said they are going report them. There are no reports on the Internet Web site. The key point here is that these records, they say, are not subject to FOIA, so all we can do is take their word for it; which is not appropriate, given the fact we know they are subject to FOIA. So it is really a lawless process, the release and disclosure of these records.

Mr. Stearns. Let's also point out that their report also said that logs routinely omit or sort of cloud key details about

who these visitors were, who they met with, what was the nature and the subject of their visits, and even includes the names of people who never showed up. Now, how could that possibly be if they are being transparent and they want to abide by their own rules?

Mr. Wonderlich. Sorry. To me it is an artifact of the design of the system that's intended to provide security for the White House rather than well-defined disclosure.

Mr. Fitton. White House officials quickly understand, in my view, what these records disclose, and they set up the meetings accordingly, to make sure that certain information is not disclosed.

Mr. Stearns. Would either one of you conclude the fact that they have routinely omitted, sort of clouded the details about the identity, and actually gave false information; would this be construed as they are obstructing in any way the requests of the outside groups or their own rules? Is this sort of a form of an obstruction to provide a behavior which is not conducive to providing transparency? Could it be construed that way?

Mr. Wonderlich. I don't have any evidence that they are intentionally obstructing it. I would note Jay Carney was asked in one of his first press briefings whether or not the White House had issued any guidance for when it's appropriate to hold meetings off site, and he didn't answer that question and basically said, look at our record. I think that is an interesting question, but

I have no evidence that they are intentionally obstructing the view.

Mr. Stearns. Ms. Weismann, I didn't talk to you. Is there anything you'd like to add?

Ms. Weismann. I think some of your questions get to what my testimony got to as well, which is that it misunderstands the nature of these particular records. I don't think there's anything that the White House has disclosed or not disclosed with respect to the White House visitor logs that is not in line with their commitment. And again, I would note that the nature of the information in these records is no different -- and I know this from personal experience -- from the nature of the White House visitor logs that the Bush White House maintained and previous administrations maintained. As Mr. Wonderlich said, it is an artifact of the nature of the records.

Mr. Stearns. My time's expired. The ranking member from Colorado.

Ms. DeGette. Thank you, Mr. Chairman.

I kind of want to follow up on that question, Ms. Weismann, because as I understand it, the litigation that your organization was involved in, starting with the Bush administration and then settled by the Obama administration, was exactly about these visitor logs. And as I understand it, there's some dispute whether FOIA requires the disclosure of the visitor logs. A lot of the watchdog groups say, yes, they think it does, and the White

House has traditionally said no. So part of the purpose of the settlement was to figure out a way to have disclosure of what they call these WAVES records; is that right?

Ms. Weismann. That is correct.

Ms. DeGette. And what is the purpose, again, of these WAVES records?

Ms. Weismann. It's for the Secret Service to be able to, from a security standpoint, clear visitors for access to the White House.

Ms. DeGette. Frankly, I would like to see ways to disclose on the video people who come to the White House and so on. But that's not what these records that we're talking about here, that's not the purpose of them; it is to get people security clearance.

Ms. Weismann. That's correct.

Ms. DeGette. In September 2009, President Obama announced a new policy to voluntarily disclose White House visitor records, and visitors records created after September 15th, 2009, are routinely posted on line; is that correct?

Ms. Weismann. Yes.

Ms. DeGette. To date, there are over 1.25 million White House visitor records posted on the White House Web site in a searchable format; is that right?

Ms. Weismann. I don't -- I can't confirm that, but that sounds about right. And there is a large volume and they are in a

searchable format.

Ms. DeGette. Now, has any administration, Democrat or Republican, before the Obama administration, routinely posted these WAVES records on line?

Ms. Weismann. No, they have not.

Ms. DeGette. Okay. Now under the Obama administration policy, visitor records created after September 15th, 2009, are disclosed on line; but records created during the Obama administration prior to that date are treated differently. For the ones before September 15th, 2009, the White House responds voluntarily to individual requests as long as they are reasonable, narrow, and specific. And then there is a form. Is that right?

Ms. Weismann. That is correct, yes.

Ms. DeGette. And do you think it is reasonable to treat the WAVES records before September 15th, 2009, differently?

Ms. Weismann. Yes, I do. If you want, I can explain.

Ms. DeGette. I would briefly, yeah.

Ms. Weismann. Yes. You know these records continue to raise, in specific instances, national security concerns. The White House was going to going forward, put a system in place where they could tag those kinds of visits as they occurred, which would make it easy when they went back to post the records on line to know which ones needed to be segregated for national security purposes. That was not done for all of the visits that predated September 2009, which would have been an enormous undertaking.

And that was the compromise we reached.

Ms. DeGette. I see. A lot of people have been criticizing this voluntary disclosure of visitor records. As Mr. Fitton said today, it is a data dump full of holes that shield rather than shed light on visitors and their business at the White House.

The recent report by the Center for Public Integrity noted the event description is left blank for more than 20 percent of the visits. And I guess, you know, I think those are valid criticisms in some ways. I'm wondering if you can talk to me about the criticisms that the visitor logs disclosures are not sufficient and can more be done?

Ms. Weismann. Well, certainly, more can be done. Again, it goes back to for purposes of the Secret Service, they are sufficient. This is the minimum --

Ms. DeGette. Right. It goes back to the nature of the records.

Ms. Weismann. Right, right. I think perhaps part of the problem is that the White House itself may have oversold what the visitor logs do and do not do.

Ms. DeGette. Okay, thanks.

Mr. Chairman, I just want to conclude my questioning by talking about the supplemental memo that we just got this morning, because I'm kind of concerned about some of the allegations and some of the members talked about this and even one or two of our witnesses. They talk about multiple news outlets reporting that

White House staff has been holding meetings at coffee shops in order to have those meetings appear on a disclose list. But these allegations are all from an unsourced article in the New York Times, which quotes a Caribou Coffee barista, but not a single named administration official. We don't know of any work that's been done to investigate the truth or falsehood of these allegations.

And the same thing, there was a newspaper report that one executive branch agency requires people to sign confidentiality agreements, and this is referring to a Politico article; but some basic work shows that HUD did nothing wrong.

In fact, our friend, our colleague Judy Biggert had asked for some evidence to that and the HUD inspector general investigated and said said nothing was wrong.

So, Mr. Chairman, I would like to enter the results of that IG investigation and report to the Financial Services Committee into the record.

Mr. Stearns. Without objection so ordered.

Ms. DeGette. Thank you.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Ms. DeGette. And I just want to finally say that there's nothing wrong with somebody going out for a cup of coffee. There is something to me that looks bad if somebody is holding a meeting at a coffee shop to avoid disclosure. So I think we need to be really careful what we're talking about here.

I'm sure all of us want to be that way, and I yield back.

Mr. Stearns. Just a point of information for the gentlelady. The administration has yet do deny these allegations. And in fact you said there's no names. Rich Gold, a prominent Democratic lobbyist, has taken part in numerous meetings at the Caribou Coffee Shop, said that the White House staff members -- and so we have a record contrary to what you just indicated.

So with that, the gentleman from Texas is recognized, Mr. Barton.

Mr. Barton. Thank you, Mr. Chairman. Before I ask my questions, I just want to make a comment on some of the things that Ranking Member Waxman said.

I guess -- I guess it is a surprise to the Obama administration that there's a Republican majority in the House, and we actually show up for work most weeks, Monday through Friday, and are holding hearings. And some of those hearings require the presence of the Obama officials. The American people understands it. Three witnesses that are here today understand it. But apparently this President and his Cabinet don't. I don't

think we should apologize that we ask the administration to have witnesses. Ostensibly they work for the people, too, and they are supposed to be at work in Washington, Monday through Friday, most weeks, and apparently they are not.

So I would hope that we could get with Mr. Waxman and Chairman Upton and figure out a way to let the Obamas know that Monday through Friday, most weeks, we're going to be in session and this committee and this subcommittee are going to be holding hearings and we are going to request the presence of senior Obama officials from the various agencies under the jurisdiction of the Energy and Commerce Committee. That should not be a news flash, but apparently it is.

In terms of this hearing today, as I understand it, the general defense of the Obama administration for being nontransparent is all the other Presidents were nontransparent, too. And that is a defense; but as the chairman just pointed out, it's not in and of itself defensible since this administration promised to be transparent. Chairman Stearns showed the clip of the President as a candidate saying that the negotiations on health care would be on C-SPAN. As we all know, that didn't happen.

The purpose of transparency is so that people in the democracy know what those that are in power are doing, who they are talking to, what they are talking about. Now, I personally do not want to know all the meetings that the President and his

National Security Advisors had about capturing and killing Osama bin Laden; I don't need to know that. That is a national security issue. Don't tell me until you can -- as the President did Sunday night -- go on TV and say, "We got him."

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[11:35 a.m.]

Mr. Barton. However, if the President wants to meet with Al Gore about global warming, that is not a national security issue. I think we have a right to know that. And this President apparently has gone out of his way to be nontransparent in spite of the fact that he said he would be transparent.

Now, we don't have an administration witness, but we do have a Democrat-recommended witness, the young lady, Ms. Weismann.

I am going to read you a quote, and you tell me who the author or authoress of this quote is: "At best, this administration is marginally more transparent than the previous administration." Who said that?

Ms. Weismann. I would like to hazard a guess that it could have been something I or another colleague of mine at CREW said.

Mr. Barton. You would hazard a guess?

Ms. Weismann. We say a lot of things publicly.

Mr. Barton. Okay. Well, my staff says that you said that. It says "Anne Weismann, chief counsel for the Citizens for Responsibility and Ethics in Washington." Do you stand by that statement?

Ms. Weismann. Yes, I do.

Mr. Barton. Okay. Do you agree that -- and, again, I am

only asking you because we don't have the administration, and you were somewhat supportive of their policies. Do you think that President Obama has tried to implement his campaign promise of being more transparent in the White House?

Ms. Weismann. I do. I think he has put some of the key components in place. The problem, in our view, is not what the White House is or is not doing; it is what is happening at the agency level. And that is where we see the disconnect between the promises of transparency and accountability the President has made and what agencies are actually doing.

And, like Mr. Fitton, we do a lot under the Freedom of Information Act, and that really informs our experience in this area.

Mr. Barton. Well, the two witnesses to your right -- and I am not going to have time to ask them questions, but both of them, in their written testimony, point out that less than half of the Freedom of Information Act requests have been honored by the Obama administration. And, as you pointed out, these visitor logs, which are really more for clearing people into the White House, don't have a lot of information about who is meeting and what the purpose is.

And, again, if it is national security, I don't want to know. But if it is energy policy, if it is health policy, if it is environmental policy, if it is budget policy, the Congress and the people of the United States, in my opinion, have a right to know.

And this President is stiffing us. He is not sharing that. And it is one thing if you don't promise to do it, but if you promise to do it and don't do it, then you should be held accountable.

With that, Mr. Chairman, I yield back.

Mr. Stearns. The gentleman's time has expired.

The gentleman from California, Mr. Waxman, is recognized for 5 minutes.

Mr. Waxman. Mr. Chairman, I was impressed by the statement of Mr. Barton. We are here at work Monday through Friday; the administration should be ready to show up when we want them to. Well, I would have thought that this hearing could have been held next week. We could have discussed another date. To say, "You have to be here 6 days from now," which is the minimum notice requirement, is awfully harsh. And if somebody can't accommodate you, then you try to get a hearing that is a fair hearing. Well, this doesn't appear to be what we are talking about today.

Mr. Barton. Will the gentleman yield?

Mr. Waxman. Yes.

Mr. Barton. You are here. Is it harsh that you are here?

Mr. Waxman. Well, I have known about this hearing, and I am here. But that doesn't mean the person at the White House has to be here if they have a conflict. If I have a conflict, I won't be here.

Mr. Barton. There is nobody in the White House --

Mr. Waxman. I would take back my own time here. The

President said on C-SPAN he wanted to have the negotiations televised. Well, I thought that was interesting. But he had also hoped when he invited Republicans to the White House to talk about health-care reform that they would do something constructive to be involved in that issue. They weren't helpful at all. And now we stand with a Republican proposal to pass the House to repeal the health-care bill -- repeal and replace. We don't even know what their replacement is.

The third point I want to make is, if we have a right to know what lobbyists or citizens have to say to the White House, why don't we have a law saying that Members of Congress have to make that disclosure? I would like to know whether Chairman Barton, when he was chairman, met with oil company lobbyists, who they were, public interest lobbyists. If we have a right to know about people in the executive branch, why don't we have a right to know about the people here in the legislative branch?

Now, I would like to know how much transparency would satisfy those who think we ought to have open government. Because, as I understand it, some of the requests to the administration for more information would produce around a million or half a million pages. That is a lot of records.

Mr. Fitton, you have a lawsuit, Judicial Watch, against the Obama administration. It is my understanding you have sought release of all visitor records from the first day of the Obama administration through the date of your FOIA request of August of

2009. Isn't that correct?

Mr. Fitton. Yes.

Mr. Waxman. Okay. From a review of the papers filed in that litigation, it appears that the number of records you are seeking is around half a million. That is quite a lot of records.

Would you agree that public release of at least some of those records -- for instance, records of visits from officials on covert security missions -- could raise national security concerns?

Mr. Fitton. Maybe, but FOIA allows for withholding of documents, citing those very concerns.

Mr. Waxman. And, Ms. Weismann, do you agree that at least some of the visitor log information collected by the Secret Service presents national security concerns?

Ms. Weismann. Yes, I do.

Mr. Waxman. Mr. Wonderlich, do you agree that sometimes we have national security concerns involved?

Mr. Wonderlich. Yes.

Mr. Waxman. I think that openness in government is important, but I don't think this hearing is really about openness in government. We are hearing complaints from Republicans that they didn't get the administration to show up when they wanted them to. Well, it is a two-way street. The President hoped the Republicans would have worked for the national interest in trying to work out a health-care bill. The Republicans just said no.

The administration wanted the Republicans to work on a boost for jobs and the first legislation to make investments; Republicans said no. The administration said to the Congress, let's work together on a bipartisan basis to reform the Wall Street issues that caused our economy to practically topple over the edge. Republicans said, no, we are against it.

And now that they are in power in the House, they can call a hearing and explore issues. And that is right, they can. But this is not a responsible hearing, when we just have a hearing complaining that people didn't show up when you didn't give them enough notice and when they requested that they have another time to come in.

Mr. Fitton, are you a lawyer?

Mr. Fitton. No.

Mr. Waxman. You are not.

Mr. Wonderlich, are you a lawyer?

Mr. Wonderlich. No.

Mr. Waxman. Ms. Weismann, are you a lawyer?

Ms. Weismann. Yes.

Mr. Waxman. Now, as a lawyer, have you ever had a situation where the opposing side requested that they have a week or 2 weeks or a month to get their information together? Is that unreasonable to accommodate them?

Ms. Weismann. Depending on the circumstances, but it certainly happens all the time in the legal arena.

Mr. Waxman. Well, it happens all the time in the legal arena, and it only fails to happen in Congress when the party in power wants to make a big to-do about it. And they don't have anything else except to try to embarrass an administration that asks that they have another chance to come in and testify at a time when they would be available and not required to be at another hearing testifying.

So, again, this hearing is what it is, and I think it is pretty clear it is not about open government, it is about politics.

Mr. Stearns. I thank the gentleman.

Obviously, the White House, if they want to be completely transparent, can show up in 24 hours.

Mr. Waxman. Point of order, Mr. Chairman.

Mr. Stearns. Sure.

Mr. Waxman. Why is it that you get to make a comment after we ask our questions?

Mr. Stearns. I will recognize --

Mr. Waxman. We each get 5 minutes.

Mr. Stearns. Yeah.

Mr. Waxman. And I think that the regular order should be Member says what they have to say in 5 minutes, then you go to the other side of the aisle; not one Member and then the chairman gets to make a comment, you go to another Member, chairman makes a comment.

Mr. Stearns. And I recognize your point of order. Thank you.

We recognize the gentlelady from Tennessee, Ms. Blackburn.

Mrs. Blackburn. Thank you, Mr. Chairman.

And I want to thank our witnesses for being here today.

I think a lot of what we are talking about centers around the President's statement that he made on day one: that democracy requires accountability, and accountability requires transparency.

So as I mentioned in my opening statement, I have spent some time on this issue with the czars that are out there. And we all know that the agencies have inspectors general and the GAO and FOIA to provide accountability for their work.

And I would just like a confirmation from you all, and I think, Mr. Fitton, I will come to you on this. Isn't it true that the Senate-confirmed agency heads are subject to greater transparency and accountability than their nonconfirmed czars that are shielded by the White House?

Mr. Fitton. Yes.

Mrs. Blackburn. Let's talk about a couple of them. Czars like climate czar Carol Browner and health-care czar Nancy-Ann DeParle don't have inspector generals to hold them accountable, do they?

Mr. Fitton. No, nor are they subject to the Freedom of Information Act because they are in the White House office.

Mrs. Blackburn. But yet they have had a tremendous impact on

legislation that has come before this committee.

Mr. Fitton. Yes, that is my understanding.

Mrs. Blackburn. And they don't have the GAO audits of their effectiveness, do they?

Mr. Fitton. I don't know about whether the GAO has purview over White House officials. Certainly, the GAO can get at them indirectly through examining HHS's and other relevant agencies' contacts acts with them.

Mrs. Blackburn. Okay. Thank you for that.

Let's talk about Ms. Browner, because last fall it was reported that Ms. Browner's staff was discovered to have doctored a Department of Interior report to make it look like a moratorium on offshore drilling was peer-reviewed and recommended by a panel of experts. And I have some of the articles, Politico's article specifically, about that late-night work that took place.

Manipulating science to achieve political goals needs to be reined in, and so how can Congress get a better handle on that type of behavior? What would be your response to this action that took place by Ms. Browner's staff?

Mr. Fitton. I think a reaction ought to be severe. This is unconstitutional activity, I believe, by the President's advisors. The President can get advisors in his White House to advise him. If they start lording over agency heads and directing agency activity the way Ms. Browner did with this report and what I understand the health-care czar did with HHS and the other

agencies, it is unconstitutional for them to be doing that. And the reaction by Congress to protect its prerogatives ought to be severe.

I point to Senator Byrd, who warned President Obama about this. The late Senator warned the President about this, that the White House was aggregating to itself powers that were in violation of the Constitution.

Mrs. Blackburn. I thank you for that. And I think that this shows why we are all so concerned about this issue and why we feel it is important to bring this issue before the committee. We have worked on legislation that has required a tremendous amount of our time, and the reports and information, when we find out they have been doctored or they have been changed or maybe it was not as represented to be, it does cause us concern.

Now, you have asked for information, or Judicial Watch has asked for information, on these two czars that I have mentioned. Is that correct?

Mr. Fitton. Yes. We asked for information on every czar that we could find, actually, but, specifically, these two czars as well.

Mrs. Blackburn. Okay. And what information did you ask for on those two?

Mr. Fitton. Their duties and responsibilities, their budget and staffing.

Mrs. Blackburn. And I would assume, just like the requests

that went in from the committee, that you were not able to get information on their budget, their staff, their salaries?

Mr. Fitton. No.

Mrs. Blackburn. Okay. I appreciate that.

All right. Did you ask for these through FOIA?

Mr. Fitton. The White House is not subject to FOIA, so we were relying on their good graces to turn the documents over.

Mrs. Blackburn. All right. Thank you.

I yield back.

Mr. Stearns. The gentleman from Texas is recognized for 5 minutes.

Mr. Green. Thank you, Mr. Chairman. And I would hope our Oversight and Investigation Committee, with all of the problems we have in the Federal Government, would spend time on a lot of other issues other than this. But since this is the hearing, then I think I will participate.

Mr. Fitton, I want to talk a bit about the lawsuit your organization, Judicial Watch, has filed against the Obama administration. You talked about some of the legal questions in your testimony, and I want to focus on the practical implications of that lawsuit.

It is my understanding you have sought release of all visitor records from the first day of the Obama administration through the date of your FOIA request, which you just said was not -- FOIA did not cover the administration, through August of 2009. Is that

correct?

Mr. Fitton. Yes.

Mr. Green. From a review of the papers filed in that litigation, it appears that the number of records you are seeking is around a half a million. That is quite a lot of records.

Mr. Fitton, would you agree that the public release of at least some of these records -- for instance, records of visits from officials on covert security missions -- could raise national security concerns?

Mr. Fitton. Yes.

The White House, to be clear, does not want to give us one document, one visitor log under the Freedom of Information Act. That is the law that protects and preserves these documents and requires their disclosure. Not one document of those 500,000, as released, they don't think should be released under this law.

The Freedom of Information Act allows government agencies to withhold records if their disclosure could harm national security. And that is something that would be appropriate. Most of the records, the 500,000, are of White House visitors who are there for tours. Two-thirds of the records that have been released, according to this report of the Center for Public Integrity, are of White House visitors. Those numbers can be whittled down in the course of negotiations.

Mr. Green. Okay. So you agree that some of the visitor log information collected by the Secret Service presents national

security concerns?

Mr. Fitton. Yes. And those can be withheld under FOIA --

Mr. Green. I only have 5 minutes.

Mr. Fitton. Sure, I understand.

Mr. Green. And I also appreciate you -- are you a constitutional lawyer?

Mr. Fitton. I am not a lawyer.

Mr. Green. Oh, okay.

I love it, Mr. Chairman, and I am a lawyer, and I submit Constitution law is not my specialty. You and I have a right to have an opinion as American citizens on what is constitutional, but the folks who actually make that decision under the Constitution are the Supreme Court.

Mr. Fitton. Right.

Mr. Green. And so, as long as we recognize that my opinion doesn't matter any more than yours or even a constitutional lawyer -- maybe a constitutional lawyer is a little higher up than we are.

Mr. Fitton. It is for the courts to decide.

Mr. Green. It is for the nine Supreme Court justices to make that decision.

Mr. Wonderlich, do you agree with what Mr. Fitton said?

Mr. Wonderlich. Which part?

Mr. Green. Well, that there are some records that shouldn't be, the visitor logs by the Secret Service, shouldn't be released

under FOIA?

Mr. Wonderlich. Yes.

Mr. Green. I know that, in September of 2009, President Obama announced a policy of posting White House visitor logs online for meetings that occurred after September 15th of 2009. To implement that policy efficiently, the White House created a process by which logs which raised national security concerns to be flagged for review when they were created and, where necessary, be withheld from disclosure.

For the records that predate September 2009, there is no way to know whether release of the information could present national security concerns unless a single record is reviewed individually.

Mr. Fitton, all of the records for which you are seeking request predate September 2009, is that correct?

Mr. Fitton. In this lawsuit, yes. I have asked for records after that and have not gotten any pursuant to FOIA, as the law requires, either. We haven't sued on that yet.

Mr. Green. Okay. So granting your FOIA request will require national security officials to review all of the approximately 500,000 records to make sure their release would not endanger the public or otherwise compromise national security interests.

Mr. Fitton. That is what the White House says.

Mr. Green. Uh-huh. Now, it is my understanding that the White House has made many of its pre-September 2009 records public. In fact, while these records were not released en masse

on the White House Web site, there is a form that anyone can use to request release of records, visitor records for particular individuals or groups, and many people make use of this feature. The White House told the committee staff about 3,000 pre-September-2009 visitor records were released using this process.

Mr. Fitton, yes or no, has your organization used this online tool to request any of the pre-September-2009 records that are subject to your litigation?

Mr. Fitton. We only can request these records under FOIA. This database is not relevant to the Freedom of Information Act.

Mr. Green. Okay, so I assume your answer is "no." I find that interesting --

Mr. Fitton. Congressman, you can't request records through that system.

Mr. Green. Well, but you can view the records, you can view them.

Mr. Fitton. Excuse me?

Mr. Green. You can view them. That should satisfy the need for a request for a FOIA.

Mr. Fitton. The records are required to be released under the Freedom of Information Act. Releasing 1 percent of the records in that time period is not complying with the Freedom of Information Act. If they have questions about whether they should be exempt from the law, they have to go to Congress to get exempt

from the law, not decide that the law does not apply to records on its own. That undermines the rule of law and transparency.

Mr. Green. I am out of time, but can you just briefly tell us how this administration's -- and maybe all our witnesses -- opinion on Freedom of Information requests differ from what President Bush's administration did?

Mr. Chairman, I think that would be helpful for our whole committee, if there is a difference between the Obama administration and the Bush administration.

Mr. Fitton. Administratively, this administration is more difficult than the Bush administration was. Legally, they are as bad or worse than the Bush administration. So they are less transparent as a result.

Ms. Weismann. I would just add --

Mr. Stearns. The gentleman's time has expired.

Mr. Green. Mr. Chairman, may the other witnesses answer?

Mr. Stearns. Oh, sure. All right.

Go ahead, Ms. Weismann.

Ms. Weismann. As an organization that litigated extensively under the FOIA under the Bush administration and now under the Obama administration, their legal position is identical -- that is, that they are not subject to FOIA.

However, the practice of the Obama administration differs radically because they are making the vast majority of these records available online as a voluntary policy.

Mr. Stearns. The gentleman's time -- oh, yes, Mr. Wonderlich?

Mr. Wonderlich. I would defer to my colleague on that question.

Mr. Green. Thank you, Mr. Chairman.

Mr. Stearns. The gentleman from Texas, Mr. Burgess, is recognized for 5 minutes.

Dr. Burgess. Thank you, Mr. Chairman.

Well, in light of those last responses to Mr. Green's question, I am going to read a statement that was said by -- and I will be inclusive here -- one of the four of us. Okay? So the three witnesses or me. So let's see who said this.

Quoting here, "We have an administration that is claiming a lot of credit for its transparency policies. But on the other hand, those policies haven't left us with a truly more transparent government," close quote.

Who said that?

Mr. Fitton. I agree with it, but I didn't say it. I don't know who said that.

Dr. Burgess. I agree with it, but I didn't say it. Okay, we are down to two.

Well, Ms. Weismann, you said that on Fox News not too terribly long ago, March 16 of 2011.

Ms. Weismann. And I stand by that statement.

Dr. Burgess. Well, look, we played the clips of the

President. I don't recall President Bush, when he was running in 2000 -- and I was just a regular guy back then. I don't know that I was paying strict attention. But I don't recall him ever standing up at one of the debates with Al Gore and saying, "I am going to run the most open and transparent administration ever. In fact, I will invite all of the energy heads in with me and we will have it on C-SPAN so you will be able to see it on television."

But I do remember President Obama saying that very thing, and we saw those clips this morning. So it doesn't look like he has kept his promise in that regard, does it? They may be legally identical to the Bush administration, but the optic is it doesn't look like he has kept that promise. Is that an accurate statement?

Mr. Fitton. In the least.

Dr. Burgess. Ms. Weismann, am I out of line to feel that way?

Ms. Weismann. I think if you are comparing the openness in records of the Obama and Bush administrations, there is simply no comparison. I think that the Bush administration -- and many scholars and other legal experts would agree with this -- was the most secretive administration we have ever experienced. I think the Obama administration --

Dr. Burgess. Look, every administration --

Ms. Weismann. -- has taken a lot of steps.

Dr. Burgess. -- needs to keep secrets, and we saw that this weekend. And aren't we all grateful that the Obama administration and leaders in the House and Senate who were involved in the discussions surrounding the extinction of Osama bin Laden, aren't we all glad that they were able to keep a secret? In fact, it is astounding to me that all of the above were gathered in the basement of the Hilton hotel on Saturday night and not a word of this leaked. So that is a true testament to the ability to keep a secret when one is necessary.

But, look, you have said yourself, there is no difference from a legal standpoint between the Bush administration and the Obama administration. In my opinion, the difference is that President Obama, when he was a candidate running for President, campaigned on this as a campaign promise, a pact that he made with the American people -- not with the Congress, not with the Senate, not with the House, not with the Supreme Court. He made it with the American people, and he has violated it repeatedly.

You all are familiar with my efforts to try to get some of the information surrounding those secret health-care meetings. I mean, it is ironic, here we are almost exactly 2 years to the day with the President coming up with all of the -- who did he have? The American Medical Association, the Hospital Association, AdvaMed, PhRMA, AHIP, health insurance, and the Service Employees International Union. He came out and said, "We have saved \$2 trillion."

Does anyone else remember that? I was startled that there was \$2 trillion in savings that AHIP had been holding back, that the SEIU had been holding back. Was anyone else struck by that figure of \$2 trillion? Or is Washington just so inured to figures that that didn't seem like any big deal to anyone else?

Ms. Weismann. Just a point of clarification. My testimony was that the legal position of the status of the White House visitor records is the same between the two administrations. I did not mean to suggest beyond that that they shared the same legal opinions on other issues.

Dr. Burgess. Okay, fair enough.

But does anyone else recall that statement of \$2 trillion being saved out of the health-care industry in this country secondary to agreements that were struck at the White House? Does that seem like a big deal to anyone else, or am I just misplaced on this?

Mr. Fitton. It is a big deal. We have been investigating those meetings, as well.

Dr. Burgess. And, you know, I had to push this -- and, Mr. Chairman, I will submit for the record a timeline of the activities that have gone on in this committee in both the last Congress and this Congress on just trying to get the scantest amount of information on that.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Dr. Burgess. I mean, here is the ironic -- March 15th of 2010, David Kay, counsel, writes to then-Chairman Waxman and Ranking Member Barton and Congressman Burgess that HHS has no relevant documents in addition to those that were provided in January of 2010. And then, on March 10th of this year, Robert Bauer, counsel to the President, responded to a letter from Chairman Upton, Stearns, Burgess, and Pitts that says the request is -- that fulfilling the request constitutes a vast and broad undertaking. Well, a year before, they said there wasn't anything there, there is nothing to give you. And now it is vast and broad?

I mean, what are we to believe, when we are told that we are going to have a transparent administration where all of these things will be up on C-SPAN, you will be able to see who is standing with the insurance companies and who is standing with the people, and nothing -- nothing -- close to that is what has happened?

And then, as a consequence, all through this town in 2009, you heard people say over and over again, look, you are either at the table or you are on the menu. People were legitimately afraid of crossing this administration during the run-up to that health-care bill. I think, especially in light of some of the things we know about the terrible drafting problems with that bill, I think it is important that we have that information.

Thank you, Mr. Chairman, for your indulgence. I will yield back.

Mr. Stearns. I thank the gentleman.

And the gentleman from Massachusetts, Mr. Markey, is recognized for 5 minutes.

Mr. Markey. Thank you, Mr. Chairman, very much.

In September of 2009, President Obama announced a new policy to voluntarily disclose White House visitor records. These records are routinely posted online, and there are now more than 1.25 million records posted on the White House Web site in a searchable format. We have heard today that no such database existed prior to the Obama administration.

Ms. Weismann, would you agree that this administration's White House visitor database provides more information about who is visiting the White House than the Bush administration, which did not have any database?

Ms. Weismann. Yes, absolutely.

Mr. Markey. Now, on his first day in office, Mr. Obama announced that Federal agencies would take a new attitude toward requests for information. When asked for information, all agencies should adopt a presumption in favor of disclosure. No longer could information be withheld because, as his memo said, quote, "public officials might be embarrassed by disclosure because errors and failures might be revealed or because of speculative or abstract fears." In other words, when in doubt,

disclose. The Bush administration adhered to a different motto, which was, "When in question, conceal."

So the presumption for information requests was not to disclose information, and the Department of Justice was there to rubber-stamp the agency's denials of information requests. Under the Bush administration, agencies were instructed to keep a lid on all records unless there was no legal basis for doing so or such action would hurt the ability of other agencies to protect their important records.

I will certainly acknowledge that Federal agencies have, in some cases, been slower than I would have hoped they would be to adopt this new culture of transparency. But even with some Federal agencies being slower to change than others, Ms. Weismann, would you agree that the Obama administration's directive, that the default on information requests should be disclosure, not concealment, is an improvement?

Ms. Weismann. Absolutely. The policy is very much of an improvement.

Mr. Markey. Okay, thank you.

I thank the chairman very much.

Mr. Stearns. I thank the gentleman, and --

Ms. DeGette. Will the gentleman yield?

Mr. Markey. I would be glad to yield.

Ms. DeGette. I just want to follow up on that question, Ms. Weismann.

Mr. Stearns. I think, in all deference, the gentleman yielded back.

Ms. DeGette. Oh.

Mr. Stearns. So we are going to go to Mr. Gingrey from Georgia.

Dr. Gingrey. Well, Mr. Chairman, thank you. Thank you for holding the hearing today on transparency at the White House.

My time is limited, of course, and I would like to ask a series of serious questions about the litigation that resulted in the release of the visitors log from the administration.

And I will start with you, Ms. Weismann. Yes or no, is it correct that CREW sought the release of Obama administration records regarding meetings with health-care and coal executives in May of 2009?

Ms. Weismann. Yes.

Dr. Gingrey. And this is yes or no, as well. Didn't CREW have to file additional lawsuits in June and July of 2009 because the administration refused to release those records?

Ms. Weismann. Yes.

Dr. Gingrey. And once again yes or no, wasn't MSNBC.com's request for logs denied, as well?

Ms. Weismann. That is my recollection, that it was, yes.

Dr. Gingrey. Thank you.

Isn't it true that, in the Washington Post article -- that is item No. 2 in your document binder -- you are quoted as saying --

and you have said part of the quote several times in this hearing, but the whole quote is this: "The Obama administration has now taken exactly the same position as the Bush administration." You further state, "I don't see how you can keep people from knowing who visits the White House and adhere to the policy of openness and transparency."

Isn't that the full quote?

Ms. Weismann. Yes, it is.

Dr. Gingrey. You know, again, why we are here, we are talking about a pledge that the President made during his campaign, a pledge to have a policy that he would adhere to during his administration to more openness and transparency, not really unlike the pledge that he made that, 1 year from my inauguration, we will close Guantanamo Bay; not unlike a pledge that he made, again, during his campaign that there would be no legal action initiated against our intelligence agents for the methods that they used in obtaining actionable intelligence, which led, incidentally, to the finding and finally destruction of that monster, Osama bin Laden -- these kind of pledges that the President made.

So when you make a statement that this is no different than the previous administration, you may be indeed correct, but the President pledged to make things different and more transparent and more open, a better way. And this hearing really, as we hear from the other witnesses, is pretty much proof positive that he

has failed miserably in that campaign pledge.

Let me ask you one more. What was the Bush administration policy regarding the status of these same logs that you were referring to? What was their policy?

Ms. Weismann. Their policy was that these are Presidential records, not records of the Secret Service, and, therefore, not subject to the Freedom of Information Act.

Dr. Gingrey. Didn't the Obama administration continue for 8 months to appeal the district court decision that the logs were subject to Freedom of Information?

Ms. Weismann. Yes, it did.

Dr. Gingrey. Thank you.

Mr. Fitton, my next line of questions is for you, and this is yes or no, as well.

Hasn't Judicial Watch had to sue the Obama administration again because they are still not releasing the visitor log records you had previously requested?

Mr. Fitton. We have not sued again, although they have responded negatively to subsequent visitor log requests.

Dr. Gingrey. Are they making the same arguments the Bush administration did?

Mr. Fitton. The Bush administration changed its argument. We had gotten FOIA records -- we had used Freedom of Information to obtain visitor logs pursuant to FOIA. Then CREW started asking for, I guess, too many documents, and the Bush administration

didn't like that, so they decided they weren't subject to FOIA anymore.

Dr. Gingrey. Is it correct that the White House discloses visitor logs 90 to 120 days after they have been processed?

Mr. Fitton. That is what they say.

Dr. Gingrey. If someone requested the logs through FOIA, how long would the administration have to respond to the FOIA request by law?

Mr. Fitton. Twenty days.

Dr. Gingrey. Do you think that the President has unfairly taken credit, President Obama, for releasing these visitor logs, when, in fact, greater and faster disclosure is required by law?

Mr. Fitton. Yes. His policy is contrary to Federal law.

Dr. Gingrey. Mr. Wonderlich, my last question is for you and, again, yes or no. Do you agree with Mr. Fitton and think the administration is taking too much credit for release of the visitor logs?

Mr. Wonderlich. Yes.

Dr. Gingrey. Thank you.

Mr. Chairman, I yield back.

Mr. Stearns. The gentleman's time expired.

And the gentleman from Louisiana, Mr. Scalise, is recognized for 5 minutes.

Mr. Scalise. Thank you, Mr. Chairman. I appreciate you having this hearing.

I wish we would have the opportunity to question someone from the White House. They could have sent anybody to answer I think what are very important questions about openness and transparency, which, again, as has been pointed out by many Members, was a hallmark of President Obama's campaign for presidency. And, you know, it is kind of ironic, in a hearing about openness and transparency, the administration refused to be open and transparent enough to even come and answer what are many important questions that still have not been answered.

And maybe, Mr. Chairman, next time, instead of holding the hearing here, we can go to the Caribou coffee shop next-door to the White House where it seems like you can find more administration officials holding hearings or meetings about who knows what because we can't get those logs.

I want to start off on the question that my colleague from Tennessee brought up regarding czars. This has been an issue that I have had real serious concerns about since the President seemed to have a proliferation of czars appointed to carry out duties that have the same functions and, in many cases, even more powers than Cabinet secretaries.

And, again, as I have stated many times, I completely support the President's ability, any President's ability, to organize their administration, but the Constitution lays out a process that requires Senate confirmation for people of that level of power. And there are reasons for that because of the scrutiny that goes

along with it, because of the transparency that goes along with it.

Ms. Weismann, I want to ask you, last year CREW had sent a letter to Attorney General Eric Holder asking him to initiate an investigation into pay-to-play allegations involving the then-czar for urban affairs, Adolfo Carrion. Can you explain to me what it was your organization requested to have an investigation into?

Ms. Weismann. I am not the best person from my office to speak to that. I was not involved in that particular matter.

Mr. Scalise. Are you aware that CREW did send that letter to Attorney General Holder to ask for an investigation into that czar?

Ms. Weismann. Yes, I am. But I am not the only person on our staff that is involved in those kinds of matters.

Mr. Scalise. Sure. It is my understanding that the basis of the letter that your organization sent was to look into allegations that, while serving as a Bronx borough president, Mr. Carrion received a number of campaign contributions from developers in close proximity to when he approved zoning changes or committed money to projects sponsored by those very developers.

Now, the question I will ask you, since you might not be as familiar with the request for that investigation, which I think would have been healthy to produce, but do you think that that sort of allegation would have come up in the transparentness of a Senate confirmation process?

Ms. Weismann. I can't speculate as to that.

Mr. Scalise. I will ask the other panelists, then. I will first go to Mr. Wonderlich.

Mr. Wonderlich. I am not sure whether that would have come up in a Senate confirmation hearing.

Mr. Scalise. Mr. Fitton?

Mr. Fitton. Whether it would have come up is an open question. But the confirmation process is the method by which you uncover information like that about high-level government officials.

Mr. Scalise. And, clearly, you know, I think when you look at -- and these are allegations that have been floating around. It is not something that just one person alleged. These were very serious allegations, enough to where organizations like CREW asked the Attorney General to hold an investigation. You wouldn't have needed to even make that request if we had that transparent process of Senate confirmation.

And yet, you look -- and, you know, when we talked about the health-care bill, one of the -- I passed legislation that ultimately got included in the continuing resolution to eliminate four of these czars, including the urban affairs position, including the health-care czar, including the climate czar and the car czar.

Now, I found it shocking that the President, when he signed that CR that he, himself, negotiated, in his signing statement

that he said he wouldn't do, he said he wasn't going to comply with that section of the law, that he was going to still reserve the right to appoint czars, even though he actually negotiated that agreement. He agreed to eliminate those four czars; he signed the law. This is a law. This isn't an Executive order; this is an actual law that Congress passed. He signed the law, and then he said, "Oh, and, by the way, I am not going to comply with this part of the law."

Now, the day he tries to circumvent the law and maybe appoint somebody into those positions that we eliminated by law, that he signed that law into, then clearly we will have a constitutional challenge because the President absolutely has to comply with the laws that he signs. He is not exempt from these laws.

I want to ask you, Mr. Fitton -- you had talked about the visitor logs that you have been trying to get from the White House. Can you tell me how many visitor logs the White House has refused to disclose?

Mr. Fitton. Oh, it is approximately -- I think it would be a half a million, most of which would be White House visitors, tourists.

Mr. Scalise. Half a million logs that they have refused to disclose. And then you said that they granted 30 to the President or whoever else. Again, we can't ask anyone from the White House because they have refused to come here. But they have granted themselves 32 different waivers to their own ethics rules. Now,

this isn't a law that we passed; this is an Executive order the President signed.

Mr. Fitton. Right.

Mr. Scalise. But even with that Executive order the President signed, he has, in essence, allowed 32 different waivers to those ethics laws. Kind of an odd concept, that you would brag about an ethics law and then quietly go and exempt yourself from it 32 times and who knows how many more times to come. Is that correct?

Mr. Fitton. That is correct. The rules he put out on his first day of his administration have an escape clause or a backdoor way of avoiding it you could drive a truck through.

Mr. Scalise. Well, thank you.

I see my time has expired. You know, Mr. Chairman, again, I wish we would have the opportunity to ask the White House these questions. These are not trivial questions. These are importance issues that we still don't know the answer to. Many organizations that are respected, transparency organizations, have had to go to court and still haven't even been able to get a resolution to this. So I appreciate you having this hearing.

And I yield back.

Mr. Stearns. The gentleman's time has expired.

The gentleman from Colorado, Mr. Gardner, is recognized for 5 minutes.

Mr. Gardner. Thank you, Mr. Chairman.

And, Mr. Fitton, I wanted to follow up with you on a couple of questions. You have answered some of these. I just want to clarify a little bit more of the information.

What types of information is your organization, Judicial Watch, currently trying to obtain from this administration, the type of information?

Mr. Fitton. Any issue of public interest, we probably have a Freedom of Information Act request on. We have been very interested in the bailouts; obviously, the Obamacare; you know, EPA, climategate; the czars; immigration enforcement or the lack thereof.

We ask about anything of note to try to get more information, because you can't rely on what you read in the press. You have to get the documents for yourselves, in our view.

Mr. Gardner. Thank you. And you are all of these subject to FOIA?

Mr. Fitton. Yes. We normally ask for these documents under the Freedom of Information Act.

Mr. Gardner. Okay. And in a memo to agency heads, President Obama said, and I quote, "The government should not keep information confidential merely because public officials might be embarrassed by disclosure or because errors and failures might be revealed." Do you think the agencies have lived up to the President's goal?

Mr. Fitton. Absolutely not.

Mr. Gardner. In that same memo to agency heads, the President said, "All agencies should adopt a presumption in favor of disclosure." Have the agencies that you have worked with adopted this presumption?

Mr. Fitton. No.

Mr. Gardner. Did the President put any teeth behind his instruction that all agencies should adopt a presumption in favor of disclosure?

Mr. Fitton. No. In fact, he appointed an Attorney General that will defend all those unnecessary, improper disclosures to the Hilton court, just like the Bush administration did.

Mr. Gardner. Is there any mechanism in place to measure agency performance and to make sure that they are complying or applying the presumption?

Mr. Fitton. There are metrics that are used by the Obama administration and outside evaluators, but they really don't go to the issues we are talking about. It is one thing to put a lot of documents on the Internet, as we have been talking about. It is another thing to refuse to disclose information about matters of public controversy that would be politically inconvenient or scandalous for an administration. On those types of requests, they are as bad, if not worse, than the Bush administration.

Mr. Gardner. And then just in some of the background for this hearing, it talks about studies by George Washington University and the Knight Foundation showing that barely half of

the 90 agencies reviewed have taken any steps at all to fulfill FOIA policies set by President Obama. It talks a little bit about Associated Press studies. It talks about the 35 largest agencies have seen an increase of nearly 41,000 FOIA requests from the previous year, but the government responded to nearly 12,400 fewer requests, despite the promise to be the most transparent and open government in --

Mr. Fitton. I mean, this is an issue of crisis proportions. The government is doing a trillion -- what is it? -- a trillion extra dollars' worth of work a year, and the disclosure and the public accountability has not kept up with that.

The bailouts, the disclosures are terrible. Fannie and Freddie, \$450 billion in moneys going toward them, potentially. The administration has taken a legal position on its own, not following a Bush administration policy but on its own, that not one document would be subject to FOIA in Freddie and Fannie, despite all the money we are spending there.

Obamacare, they are terrible. Department of Justice, they are terrible. They are doing so much more and giving us so much less.

Mr. Gardner. The other two witnesses would like a chance to speak, perhaps, to this question. Do you believe that the administration is keeping up with the requests for FOIA at an adequate level?

Ms. Weismann. No, I do not. And, as some of you have quoted

back to me some of my statements in the past, that is exactly what I am referring to. We see a large disconnect, unfortunately, between the policies the President put in place and the actual agency practices.

And, like Mr. Fitton and his organization, I am sad to say that we have also experienced the same aggressive nondisclosure approach by the Department of Justice as we did in prior administrations. It is clear that reversing a culture of secrecy is very, very difficult, and we are by far not there yet.

Mr. Gardner. So you would characterize this administration's approach as aggressive nondisclosure?

Ms. Weismann. I don't know if those are the words I would use. I would say the policies of disclosure are in place but the actual practices do not comply with those policies.

Mr. Wonderlich. My organization doesn't do nearly the FOIA requesting that my colleagues do, but we do have a pending FOIA request that we submitted after doing an extensive analysis of the data quality on USAspending.gov, where we found over \$1.3 trillion of missing or broken spending reporting from that Web site.

We submitted a FOIA request to the Office of Management and Budget to see how each agency is tracking the spending of contracts and the data quality, and that has been more than 6 months that they have basically stonewalled and not gotten back to us. And it is still a standing FOIA request from us.

Mr. Gardner. Just if I could follow up real quickly. I am

out of time here. The \$1.3 trillion in missing spending that they have said that they would disclose but they have not?

Mr. Wonderlich. So, the Web site USAspending.gov that is supposed to disclose grants and contracts information has fundamental problems with the data quality. And we did an extensive analysis, which you can see on clearspending.org's Web site we set up to share it, to follow up and apply that analysis to contract information. We submitted a FOIA request that we are still waiting for a response from.

Mr. Gardner. Based on the lack of FOIA response, do you believe that omission, the \$1.3 trillion omission, is that intentional?

Mr. Wonderlich. No. That is a systemic problem.

Dr. Burgess. [Presiding.] The gentleman's time has expired. The gentleman from Virginia, Mr. Griffith.

Mr. Griffith. Thank you, Mr. Chairman.

Let me make a couple of comments first in regard to some of the things that were said here previously. My concern -- Mr. Waxman is right that sometimes you get a continuance. But in this type of a setting, with as many executive-branch people and employees and so forth who are out there, I am beginning to see a pattern in my short period of time here, and it is very concerning, that has the administration not sending people to hearings to answer questions of Congress.

And it is of great concern, particularly when some of the

testimony we have heard indicates that, without legal authority, the various agencies of this administration are creating laws out of whole cloth, creating new rules because they think the old rules are absurd, et cetera. And so I am very concerned about that.

And Mr. Green and Mr. Fitton had a conversation where they talked about the opinions that various people have, but only the Supreme Court can interpret the Constitution and make rulings on that. In the end, I do find it very interesting that, however, the administration, in regard to the Defense of Marriage Act, made a decision on its own. And so, not only is the administration taking on legislative authority, it is also taking on the authority that Mr. Green quite rightly pointed out belongs to the Supreme Court.

And while we may have our opinions, you know, the President has now given an order not to enforce the law. So the executive branch is, by its own admissions -- and Mr. Green pointed that out indirectly earlier -- is not enforcing the law and, therefore, not doing its job.

And on top of that then, it comes to my attention through staff and so forth that, about 3 weeks ago, the White House secretly circulated an Executive order on political spending disclosure, and the only way the American people heard about it was from a leak.

Mr. Fitton, are you familiar with this Executive order which

would require government contractors to disclose political contributions and expenditures made in the 2 years prior to their bids?

Mr. Fitton. Yes. I reviewed the purported draft.

Mr. Griffith. And isn't it true that one of the substantial reasons, maybe, for having such a requirement is to create a political litmus test or an enemies and friends list for people who wish to do business with the Federal Government?

Mr. Fitton. Or a fundraising list.

Mr. Griffith. And wouldn't it also be of concern -- or, it is of concern to me; I want to know if it is of concern to you -- that, based on the President's prior statements in regard to another context, that Republicans would have to take a back seat in the bus, that if you were a contractor doing business with the Federal Government who might have a political leaning toward the Republican side, that they would want to use that as an attempt to say that, if you are going to play ball with us, you either have to give us or give our friends money or you have to stop giving money to the people you philosophically agree with?

Mr. Fitton. Yes. I think the memorandum, if implemented, would codify corruption into the Federal contracting process.

Mr. Griffith. And if the President wants to issue an Executive order taking an action which previously was considered and rejected by Congress -- and, frankly, I think would be terrible policy -- doesn't that call for a higher level of

openness and public feedback than a regular Executive order and that this should be out there in full disclosure and everybody who has advised him on it ought to be known, and, in fact, there ought to be a great deal of hearing on this, should there not?

Mr. Fitton. I think this needs to be thoroughly debated and vetted by our elected officials, both, obviously, the present administration and here in Congress. It not only impacts the Federal contracting process, but I also think it impacts the First Amendment rights of third-party, innocent groups.

Mr. Griffith. And so you think it could lead, even if unintended, it could lead to retaliation or harassment of companies or third-party groups or other political groups?

Mr. Fitton. Well, frankly, I think that is the intent of the disclosure requirement.

Mr. Griffith. Uh-huh. I mean, I can't disagree with you. I don't think there is any other way you can interpret it. And so you believe it would chill political speech amongst all of the contractors?

Mr. Fitton. Or guarantee a certain political speech, as far as contributions to the party in power or the party running the administration making the contracting decision.

Mr. Griffith. Right.

Mr. Fitton. It wouldn't surprise me if a Republican administration left this in if President Obama -- because the Republican Party would benefit because they would be doling out

the contracts. It is just a terrible precedent.

Mr. Griffith. It is bad precedent and bad government. And did you find it curious that unions were left out of the Executive order?

Mr. Fitton. I found it not surprising.

Mr. Griffith. Did you find it not surprising but troubling?

Mr. Fitton. Of course it is troubling. Unions are well-known to be supportive of the President's political campaigns. And if they are not subject to the same types of disclosures as those perceived to be opposed to his political campaigns, it is troubling.

Mr. Griffith. Yeah. I would have to agree with that and appreciate your testimony.

Ms. Weismann, I have to tell you, I think you did a nice job today and that you were very fair in your comments. I might not have completely agreed with you on some of the things philosophically, but I thought that you did a very nice job.

And I appreciate all three of you being here today.

Thank you very much. I yield back my time, Mr. Chairman.

Mr. Stearns. [Presiding.] The gentleman yields back his time.

I think we will do a second round here, if the witnesses will be patient with us for a little longer.

Mr. Fitton. Sure.

Mr. Stearns. Mr. Fitton, I would like to explore that, in

your opening statement, you talked about the idea of -- I think you indicated there were 32 waivers that were given by the administration. In fact, these waivers were basically a decision that was either made by the counsel for the administration or the President himself.

In light of the fact that the administration, the President said, quote, "Lobbyists will not work in my White House," is what his statement was. And on one of his first days in office, he signed an Executive order banning lobbyists from serving in his administration.

Based upon this Executive order, did the President violate his Executive order, Mr. Fitton, in your opinion?

Mr. Fitton. Well, you know, the President's position is, "I will not hire lobbyists unless I want to hire lobbyists. I will not allow these lobbyists to work on work that they previously worked on in their private capacity unless I want them to do that."

So the President wants to have his cake and eat it, too, on these issues. He holds two positions at once. It is incredible.

Mr. Stearns. Yeah. The Washington Examiner actually, last year, did a story on this, in which they said, "More than 40 ex-lobbyists now populate top jobs in the Obama administration, including three Cabinet secretaries, director of central intelligence, and many senior White House officials."

When you go through this list, these are people working in

the White House: Patton Boggs we all know is a lobbyist firm in town. Covington & Burling is a law firm, but it is also a lobbyist. Cassidy & Associates is clearly a lobbyist. Akin Gump; Center for American Progress. So I have this list here -- Hogan & Hartson. I have the names of the individuals who are from those lobbying firms.

Mr. Fitton. Right.

Mr. Stearns. So what does a so-called lobbyist ban do? And how hard is it to get a waiver from these policies? I think the question we are asking -- the President had an Executive order, and then he issued waivers, over 40 waivers. I mean, he had waivers on health care. He is up to almost 1,200 waivers on health care so people don't have to comply to. So now the President is issuing waivers in his administration against his signed Executive order banning.

So, do you have any understanding how you get a waiver? How hard is it to get a waiver?

Mr. Fitton. Well, the ethics pledge allows for a waiver -- has a waiver escape clause.

Mr. Stearns. So there is a component in the Executive order?

Mr. Fitton. Right.

Mr. Stearns. And do you know the wording of that?

Mr. Fitton. It is available on the White House Web site. I don't have it in front of me.

Mr. Stearns. Ms. Weismann, do you know what the wording is

for this waiver? Is it easy to get a waiver, in your opinion?

Ms. Weismann. I don't know what the exact wording is. I don't have it in front of me either.

I think that there still have been relatively limited number of waivers. But let me be clear, I think it is probably --

Mr. Stearns. I think 40 is a pretty significant number if the President makes a pledge, "No one will work in my White House who is a lobbyist."

Ms. Weismann. Well, CREW's policy has been all along we didn't necessarily support the ban on lobbying. We are all about disclosure and don't feel that lobbying, itself, should be banned, but, rather, there should be disclosure for everyone, whether it is Congress or the White House.

Mr. Stearns. Well, in all deference to you, the President found it was pretty important for him to make that strong statement, that no lobbyist will be working in my administration.

Mr. Wonderlich, do you have any idea how you get a waiver? Or is there is a standard policy or process that you would follow to get a waiver?

Mr. Wonderlich. I don't know exactly how it works, but I would assume it previously would have gone through the ethics czar, the special counsel for ethics and government reform, who -- that position no longer exists. But up until when he left, I would assume it would have gone through him.

Mr. Stearns. So the administrative position that would make

this jurisdiction decision is no longer there?

Mr. Wonderlich. Presumably. It has probably now fallen under the White House counsel, Bob Bauer.

Mr. Stearns. So the White House counsel, at this point, is making the waivers based upon some policy which we don't really know.

You know, not to reiterate the point again, but I remember in the State of the Union the President said, quote, "We have excluded lobbyists from policymaking jobs," end quote. Yet, as I have pointed out, all these lobbyists are now working in the administration. So it is difficult to understand how the President can actually say lobbyists will not be working in my administration when it appears there are over 40 that are doing that. And more than a dozen of those hired have required the White House to issue a waiver from the ethics pledge he asked senior officials to sign.

Is that correct, Mr. Fitton?

Mr. Fitton. It looks like there are many of these ethics waivers. To be clear, these waivers are available via our Web site. You can't find them readily on the White House's since they take them down, I believe, as employees may leave. But the records are available through our Web site, and the link is referenced in my written testimony.

Mr. Stearns. Well, I would just say that the President's statements are pretty bold and they are pretty dramatic and they

are pretty clear. Yet he is using this counsel at the White House to give waivers for precisely the people he said would not be in his administration. And you can parse words by saying, "We are giving waivers under certain situations," but a lobbyist is a lobbyist.

So I think the President has to be held accountable for his statement and the fact that he has a large number of lobbyists, over 40, that are working.

Yes?

Mr. Fitton. Well, I told Norm Eisen at that meeting about the White House visitor logs that, you know, like Ms. Weismann, I thought the lobbyist ban was overblown and silly. But he promised, and he needs to keep his promises.

And if he didn't want to keep his promises and he thought maybe the idea was not good and that the campaign promise ought to be rescinded in the interest of good government and getting the best people in, he should say that. But don't say you are not hiring lobbyists and then do it contemporaneously.

Mr. Stearns. Well, and he goes so far in the State of the Union to say, quote, "We have excluded lobbyists from policymaking jobs." I mean, that is rhetoric, but it is also not true.

Mr. Fitton. Not true.

Mr. Stearns. My time has expired.

The gentlelady from Colorado.

Ms. DeGette. Thank you, Mr. Chairman.

Now that we have had a big session trashing the President and things he said and allegedly did, let's really talk about what this hearing is about and some of the evidence.

Now, Mr. Fitton, are there 40 waivers or 32 waivers right now? Because we had seen in your testimony that you had said there are 32 waivers.

Mr. Fitton. There are 32 ethics waivers, as best as we can tell. I would --

Ms. DeGette. Okay. So, hang on. So there are 32 ethics waivers. Are all of those waivers to lobbyists, yes or no?

Mr. Fitton. I do not know whether they are all to lobbyists.

Ms. DeGette. Okay. Well, I actually have the list. And I am sure it is on your Web site, so you could get it, too.

Mr. Fitton. I have it here, so I can refer to it.

Ms. DeGette. What Norm Eisen said -- he is the White House ethics advisor -- "Few of the waivers were to registered lobbyists." Is that correct?

Mr. Fitton. I don't dispute that.

Ms. DeGette. Okay. So your answer would be "yes," right?

Mr. Fitton. I don't --

Ms. DeGette. Yes or no?

Mr. Fitton. I don't have any information to dispute that.

Ms. DeGette. Okay, Mr. Wonderlich, do you know how many of the waivers are to registered lobbyists?

Mr. Wonderlich. No.

Ms. DeGette. Do you know, Ms. Weismann?

Ms. Weismann. No, I do not.

Ms. DeGette. Okay. Now, look, I am not saying that you should have registered lobbyists, but every so often it might be appropriate, if disclosed. For example, William Lynn, who is the Deputy Secretary of Defense, once worked at a defense contractor, and he got a waiver. Naomi Walker, who is the Associate Deputy Secretary of Labor, worked at the AFL-CIO. Now, they both did get waivers, but they were specifically not allowed to work on issues that would be of conflict. For example, Naomi Walker was not allowed to work on matters relating to regulation or contracts with unions.

Now, Ms. Weismann, I want to ask you a question. I think the President was saying he doesn't, in general, want to have lobbyists working there, but if you are going to have some lobbyists working there, what you want is, A, disclosure and, B, people not working if they have the conflicts of interest, in other words, being taken out of those conflicts. Is that correct?

Ms. Weismann. Yes, it is.

Ms. DeGette. And in your oversight experience, I wonder if you know how many former lobbyists are working in the Obama administration versus, say, in the Bush administration? Do you know that information?

Ms. Weismann. No, I don't.

Ms. DeGette. Okay.

Ms. Weismann. I know that it is very common in Washington for people to cross both lines.

Ms. DeGette. Sure. Sure.

Now, the only other question I wanted to ask you, following up on what Mr. Markey was asking and also what Mr. Gardener, my colleague from Colorado, was asking you, because this is something that disturbs me, is you had said that the good news is that the Obama administration has put together these aggressive FOIA rules, much more aggressive than previous administrations. Right?

Ms. Weismann. Yes.

Ms. DeGette. But then you said that we are having difficulty getting them implemented in the agencies. Is that correct?

Ms. Weismann. Yes, it is.

Ms. DeGette. I am wondering if you have some sense of why that is?

Ms. Weismann. We do, actually. CREW conducted a survey of hundreds of FOIA professionals last year, and the results were, I think, very enlightening. They don't have the resources they need. They don't have the training they need. And I do think that we are talking about truly a culture change, and that just takes time.

Ms. DeGette. And a lot of the information officers at these agencies are career people who have been there for a long time and are used to doing things a different way, right?

Ms. Weismann. That is certainly true.

Ms. DeGette. So one thing I think we could -- on this committee, we might disagree on both sides of the aisle about, you know, is President Obama pure or not pure or is he keeping his promises or whatever. But when you cut through all of that partisan bickering, all of us would agree that we want to have open disclosure.

And so I am wondering, for all three of you, if you have an idea for this committee about how we can help the agencies comply much more directly and clearly with these Obama administration FOIA guidelines.

RPTS DEAN

DCMN BURRELL

[12:35 p.m.]

Ms. Weismann. Well, I think there is certainly legislation that could enhance the transparency. Our larger concern as an oversight or ethics watchdog kind of group is with the continued reliance on exemption 5 which allows the agencies to protect deliberative process material. We think there should be built into the FOIA statute a balancing test so that we get to argue that the public interest outweighs that, and that is just an example. But definitely there is room for legislation that I think would enhance transparency and just as importantly would ensure that it is not the political football that it has become over the last I don't know how many administrations.

Ms. DeGette. Mr. Wonderlich, would you have anything to add to that?

Mr. Wonderlich. Yeah, I would say I would love to see a far more engaged Congress working on individual information policy questions, that are just punted to the agencies and then ignored. And then I would also like to see individual committees thinking about the laws that form their jurisdiction and whether or not their disclosure requirements within those laws that have atrophied over time and have disclosures that have been important.

Ms. DeGette. And Mr. Fitton?

Mr. Fitton. I don't disagree with anything my colleague said. One shortcut may be to ask the Department of Justice why it defends what we believe to be improper disclosures the way they do as aggressively as they do. If the lawyers for the Justice Department were to tell the agencies that they represent in the FOIA litigation that we are not defending this anymore, you need to start disclosing that, that might be one way of getting the politicals at these agencies to start paying attention to what they are withholding and why.

Ms. DeGette. Thank you. Thank all of you for coming. I thought this was informative, and I was tempted to call both of you young man. But Ms. Weismann, as I have noted in my many years of Congress, the more often people call me young woman, the happier I get, the older I get.

Ms. Weismann. You can call me young woman.

Ms. DeGette. Yeah.

Mr. Stearns. Let me ask the ranking member, we are now in a second round of questioning, do you want to go on the protocol that Mr. Weiner would be recognized for his first round or would you like to have the opportunity he would contribute as his second round?

Ms. DeGette. He can contribute in any way he --

Mr. Stearns. Mr. Weiner, would you like to contribute as just a second round of negotiation?

Mr. Weiner. I feel ill equipped. I only have one round in

me. So whatever you want to call it.

Mr. Stearns. Under the procedure if you don't mind we are going to go to a Republican and come back to you as your second round.

Mr. Weiner. Certainly.

Mr. Stearns. Mr. Griffith from Virginia is recognized for 5 minutes.

Mr. Griffith. Mr. Chairman, I am going to yield back my time. I am learning lots listening here. I am of course very concerned about some of the things I heard, but I yield back.

Mr. Stearns. The gentleman from New York, Mr. Weiner, is recognized for 5 minutes.

Mr. Weiner. Well, thank you very much, Mr. Chairman. Forgive me, I was watching the hearing with great interest. I just want to say at the outset I agree with you, Mr. Chairman. It is irresponsible, wrong and a dereliction for the administration not to send a witness. I think that whether we agree with what they are going to say, whether it is a fair hearing, whether the questions are fair or not, I think that the administration has to send -- particularly since the administration is being invited to answer these questions in front of one legitimate committee, ours, and one that just investigates stuff. So I think this would have been a constructive thing for them to come.

I have to say that the President was right in that video that was played saying that it is going to be negotiated in public. We

held, what, I think 2000 hours of hearings and markup in this committee in front of cameras rolling the entire time. We were on television all of us stating our positions back and forth, hundreds of times in public forums, town hall meetings left and right. This was probably the most open process, I mean it was gut wrenchingly open. Sixteen months it was like -- I don't know what childbirth is like it was pretty darn close. We gave birth to a 2,000-page bill so much so my Republican colleagues were complaining they have to read the bloody thing. There are like, my God, there are so many words here. What are we going to do with them all? Now the complaint is how you should have let us in on a little bit more. Well, I have to tell you something that I for one believe that we want to have sunlight, we want to have transparency, and there was an enormous amount of it in this process, so much so that more of the complaints nationally and in this body were how long the process was going, not that there was insufficient information.

And let's remember something here. The real conversations that are protected from the public are the conversations between the health insurance lobbyists and their wholly owned subsidiary, the Republican Party. Like how come we are not asking for any of those conversations? When we on the Democrat Party in this bill force health insurance companies to hold down the amount that they take for profits and overhead and pass along more in health care, and the Republicans were raising money from those health insurance

companies and voted unilaterally against it, I want to see some of those conversations. Where are those fund-raisers and those steak dinners and those cigar bars? I want to be there and have some transparency about that.

I mean look, the fact of the matter is I want to see when it was that my Republican friends got together in a room and said, you know what, we don't want to add 10 years to Medicare, we don't want to do that. We are going to go out and vote as a group to make sure that they don't get a single vote for that. Where did that conversation happen? I want to see some sunlight on that conversation.

And where was it that the conversation happened that the Republicans got together and said, we don't want to close the donut hole for seniors so they have to continue to pay money out-of-pocket for drugs. Where was that meeting held? I want some investigation to find out where that decision was made that seniors would have to pay more money. I want to find out where it was written that my Republican friends would come up with this idea about lying what was in the bill, like death panels and everything else. Those conversations I would like to see because those we had no sunlight at all on those things.

We had hours and hours and hours. This room was full, was full of people coming here and not explaining that, you know what, I happen to be here to fight for the insurance industry as some of my Republican friends seem to be doing. Those are the

conversations I care about.

We had town hall meetings, we had hearings, we had markups. Look, I will stipulate to the idea that we want to have as much transparency as possible. But I will not stipulate to the idea that the President didn't live up to his responsibility by having the process out in the open. It was so out in the open, it was like -- I mean I was exhausted. When I started this process I was 6' 4" and 290 pounds. This is all that is left of me.

So I think we have to remember this is an important debate to be having, how you have transparency and make sure that the American people know what is going on. But the American people saw what was going on. They saw basically the Democratic Party, the leadership of the President trying to solve a national crisis that we are spending billions and billions and billions of dollars, because we have people going to hospital emergency rooms with no insurance and passing along the bill to the rest of us. That is what this debate was about.

And by the way, it was also expressed in many, many forms during the campaign. When people voted, they said we want you to solve health care. And when we lose jobs, when localities are struggling, when people can't afford their health care, when all of us are paying for those that are not and we have hundreds of hours on a 2,000-page bill and then long debates on these things clearly into the night. I don't think the American people are saying, ooh, tell me more. They are saying, you know what, that

was a long, healthy process. And what they do know is that on one side were people who were fighting every day to improve health care and make it more affordable and the other side was a wholly owned subsidiary of the health insurance industry called the Grand Old Party.

And I yield back my time.

Mr. Stearns. I thank the gentleman. I remember when you used to say you were 6' 6" and 300 pounds, so it is now 6' 4", 290. Just as a chairman's prerogative, he is welcome to answer my question, what would you say, and I heard what you said about Republicans and wanting to read the bill, what would you say to former Speaker Pelosi who said we will have to pass the bill so that you can see what is in it.

Mr. Weiner. Will the gentleman yield?

Mr. Stearns. I will yield.

Mr. Weiner. That is actually not what she said. You know, what she said was that when he she was asked a question why do the American people not support the bill that she was saying was so great. And she said very often the bills have to become passed and to become part of the law for people to be able to separate the wheat from the chaff. Do you have any idea how many lies we were told about this bill during the process, Mr. Chairman? And what she said turned out not to be entirely true because -- not you personally -- people kept lying about it even after it was law. So now you are taking an urban myth that she said people

have to read the bill to learn what is in the bill as if the idea that she didn't know. We knew what was in the bill but the American people had to hack through stuff that was being made up about the bill every single day. And she had confidence that sooner or later when the bill was passed and became law, people saw they are getting help with prescription drugs, with preventive care without a co-payment, that people once they saw that all the lies would fade, unfortunately she turned out to be wrong.

Mr. Stearns. Thank you. The gentleman from Texas is recognized for 5 minutes.

Mr. Burgess. Thank you, Mr. Chairman. I appreciate the recognition. You know, we did have a lot of hearings in the spring of 2009. We had hearings that were sort of single focused. We were always having hearings about how to expand Medicaid to more people in this country. We never really had any hearings about how expensive that would or would not be, but we missed the big story.

One of the things we were tasked with by the American people in the summer of 2009, we had those very big town halls, two things they asked us for. Number one, don't mess up the system, it is working arguably well for 65 percent of us. And number two, if you are going to do it at all, could you please help us with cost?

What did we do? We created a system now that it requires 1,200 waivers in which to work. So I don't think you can argue

that we didn't mess up what was already working. And what did we do about cost? Well, costs are going up. But was there any place in the country where we could have looked and perhaps asked a few questions about how costs in some environments are not just being held level but in fact coming down?

What about Governor Daniels in Indiana? What about his Healthy Indiana Plan? What about a plan that for his State employees has saved 11 percent over 2 years time? Why did we not bring Governor Daniels to the very witness table, chain him to the chair until he spilled the beans about how he was able to hold down costs. And how did he hold down costs? He put people in charge of their own money. Something magic happens when people spend their own money for health care as it turns out, even if it wasn't their own money in the first place.

I could go on and on about the number of amendments offered in this committee. I had my own table for amendments. I got five accepted by the committee before the bill H.R. 3200 left this committee room and went over to the floor of the House. But what happened on the way to the floor of the House? It got tied up in the Speaker's Office. Was that on C-SPAN? Did anyone get to participate in that besides the White House, Rahm Emanuel, Speaker Pelosi? I would submit that probably even our good friend Anthony Weiner was not called into those discussions.

What happened then? We got a 2,000-page bill, people were mad about a 1,000-page bill, they were really mad about a

2,000-page bill. And no one had any earthly idea it was written in secret in the Speaker's Office with heavy input from the White House.

But that wasn't the end of the story. We passed that thing in middle of the night on the floor of the House early in November, dead on arrival. You can't find that legislation no matter if you look high or low, you cannot find it because Harry Reid had a secret bill in his desk drawer. I suspect his left desk drawer. And this was H.R. 3590. Now 3590 had already been passed by the House, but it wasn't a health care bill, it was a housing bill. Harry Reid took a bill that we had passed, a housing bill, stripped all the health care language out of it, stripped all the housing language out of it and began to put health care language in. Is this an open transparent process the way this occurred? Harry Reid went to every Senator on his side of the aisle in the Senate and said, what will it take to get your vote? When he got that he put it in 3590, they passed it on Christmas Eve right before a snowstorm so they could all go home. And in truth they thought they would come back to a conference committee and get to smooth out some of the rough edges that were in that bill.

But a funny thing happened on the way to the conference committee. The State of Massachusetts had an election for a Senator. Senator Brown was elected in Senator Kennedy's old seat. No longer did Harry Reid have 60 votes. And he came back and

said, Nancy, this is the best I can do. You have to take this thing and pass it on the floor of the House. I remember what Congressman Weiner's colleagues said then, oh, no, you don't, we are not voting for that thing, it has got an independent payment advisory board in it.

Talk about sunlight. Did we ever have a hearing on the independent payment advisory board in this committee? Did we ever have a chance to mark that up, and vote on it, and amend it? I don't think so. That was a product of the Senate. The public option that Mr. Weiner liked so much was completely excluded by the Senate bill, except the fact that it probably still is in there, in the national exchanges.

This is the problem. When you do things in secret, when you do things behind closed doors and don't have them vetted by the appropriate committees of jurisdiction, you could go on and on about the drafting errors in this bill, but that is the reason it has happened because regular order was completely subverted and there was no transparency.

Now, Mr. Fitton, let me just ask you because you and I have dealt with aspects of health care law with regard to the transparency issue. I have had trouble getting information out of the White House. You have too, haven't you?

Mr. Fitton. That is right. We have asked specifically -- the White House isn't subject to FOIA. So no administration is going to happily comply with requests for information from a party

like Judicial Watch, but HHS is. As I said in my testimony, they have yet to produce one document to us under the Freedom of Information Act about these health care waivers.

Now if you are a proponent of the ObamaCare law, you might have an interest in knowing why it is being waived all over the place. And obviously as an opponent there would be an interest as well. But the administration does not want to disclose pursuant to the law anything about this thus far and it is ongoing and people are confused about whether the law is being enforced arbitrarily and capriciously, yet the administration is completely silent for practical purposes in terms of disclosing it to the American people, to which they are accountable under the law.

Dr. Burgess. Well, let me just point out, too, that the American Health Insurance was in those secret meetings at the White House. I never had any meetings with the AHIP, but the White House did. Why weren't those disclosed, why weren't those on the record meetings?

We have heard Anthony Weiner talk about -- Congressman Weiner talk about why that was important to have those meetings on the record. Why not have those very meetings down at the White House on the record as well?

Mr. Fitton. Well, the President promised those types of meetings would be on C-SPAN. And to the Congressman's earlier point, I think the Freedom of Information Act should be modified to apply to Congress in a way that protects your constitutional

prerogatives but provides more disclosure about some of the activities that you are engaged in. The President made the decision to have these decisions made behind closed doors contrary to campaign promises. There is no doubt about it.

Dr. Burgess. Thank you, I yield back.

Mr. Stearns. The gentleman yields back, time has expired. I appreciate the witnesses' forbearance here as we moved a little bit off center here on talking about things. I say to my good friend, Mr. Weiner, former Speaker Pelosi's statement being urban myth, that actually if he wants to I can show him the video of it after the hearing. I would be glad to call it up, I think we have it right in the back here, if he would like to look at it.

But I would like to close by just asking unanimous consent of the ranking member to put this article which he alluded to or talked about from the Washington Examiner in the record. Without objection, so ordered.

[The information follows:]

\*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

Mr. Stearns. And again I want to thanks the witnesses for their participation, and the subcommittee is adjourned.

[Whereupon, at 12:54 p.m., the subcommittee was adjourned.]