Opening Statement
Tom Fitton, President
Judicial Watch

Hearing of the House Committee on Oversight and Government Reform

"Ensuring Transparency through the Freedom of Information Act (FOIA), Part I"

June 2, 2015
2154 Rayburn House Office Building

Good morning, I'm Tom Fitton, president of Judicial Watch. Judicial Watch is a conservative, non-partisan educational foundation dedicated to promoting transparency, accountability and integrity in government, politics and the law. We are the nation's largest and most effective government watchdog group.

Judicial Watch is, without a doubt, the most active Freedom of Information Act (FOIA) requestor and litigator operating today. Thank you, Chairman Chaffetz and Congressman Cummings for allowing me to testify on this important topic. Judicial Watch used the open records laws to root out corruption in the Clinton administration and to take on the Bush administration's penchant for improper secrecy. Founded in 1994, Judicial Watch has over 21years' experience using FOIA to advance the public interest.

Our government is bigger than ever, and also the most secretive in recent memory. President Obama promised the

Transparency is about self-government. If we don't know what the government is doing, how is that self-government? Frankly, how is that even a republic?

Congressional oversight is sorely lacking – lacking on all fronts. Congress is like a fire department that shows up after your house burns down and shouts "fire." Even President Obama, flailing for an excuse over his IRS' massive oppression of his political opponents, suggested that the government was too big and he had no way of effectively monitoring his own agencies.

And, too often, the fourth estate acts as PR rep for big government and fails to do the hard work of keeping watch on government waste, fraud and abuse. And even under FOIA law, the courts have deferred to the whims of the executive branch and have applied FOIA in a way that makes it more difficult for the American people to find out how their tax dollars are being used or misused.

Now, this has all led to the transparency crisis here in D.C.

Never in our history has so much money been spent with so little accountability. Frankly, all of Congress should focus on "government reform and oversight," instead of assigning it to one or two committees.

Americans are rightly worried they are losing their country. We have the forms of democracy – elections, campaigns, votes, political fundraising, etc. – but when Congress authorizes $1.5 trillion in spending after just three days of debate, and when the executive branch won't tell you much

obstruction and perjury laws by top officials of this administration.

With respect to the IRS scandal, Judicial Watch litigation forced the agency to admit that Lois Lerner emails were supposedly lost. And it was Judicial Watch FOIA litigation that forced the IRS to admit that her emails were not actually necessarily lost. Only Judicial Watch uncovered the troubling revelation that the Obama IRS and Justice Department were collaborating on prosecuting the same groups that the IRS had lawlessly suppressed. Again, Congress has seemed to have lost interest in the IRS scandal but JW continues to do the job of oversight and remains the key vehicle for revelations about the continuing abuse of the IRS.

And then we have perhaps one of the most egregious violations of federal transparency law since FOIA was passed nearly 50 years ago.

On March 2, 2015, *The New York Times* reported then-Secretary Clinton used at least one non-"state.gov" email account to conduct official government business during her entire tenure as the secretary of state.

There are at least 18 lawsuits, 10 of which are active in federal court, and about 160 Judicial Watch Freedom of Information Act (FOIA) requests that could be affected by Mrs. Clinton and her staff's use of secret email accounts to conduct official government business. I can tell you that we dismissed several lawsuits based on lies by the State Department that it searched all of Hillary Clinton's emails and couldn't find anything relevant to our requests. In Judicial Watch's various FOIA lawsuits, our lawyers have informed attorneys for the Obama

> previously produced in another litigation … Judicial Watch has no reason to believe that the State Department would have ever disclosed that its search was compromised had Judicial Watch not asked for search affidavits when it reviewed the draft *Vaughn* index and limited production.

A statement by the State Department in a February 2, 2015, status report was the first notice to the public and the court that other records had not been searched: "[The State Department] has discovered that additional searches for documents potentially responsive to the FOIA must be conducted."

The State Department's early response to the scandal has not been encouraging. While new records will be searched in response to future FOIA requests, there are no plans to go back and review the accuracy of what has already been produced in response to FOIA, Marie Harf, a State Department spokeswoman has said.

The State Department is obligated to secure the accounts as soon as possible to protect classified materials, retrieve any lost data, protect other federal records, and search records as required by court orders in our various FOIA lawsuits, and in response to congressional subpoenas, etc.

Rather than allowing Hillary Clinton's campaign advisers to review email and release material to the government, the agency should assert its ownership, secure the material and prohibit private parties from illicitly reviewing potentially classified and other sensitive material.

On April 30, 2015, Judicial Watch sent a letter to Kerry "notifying him of the unlawful removal of the Clinton emails and requesting that he initiate enforcement action pursuant to the FRA," including working through the attorney general to recover the emails.

Patrick Kennedy, under secretary of state for management, responded on Secretary Kerry's behalf on May 14. The letter ignored Judicial Watch's demands that the secretary comply with the FRA.

Kerry's actions represent "an abuse of discretion" that has led to the continued withholding of official government records from the American people.

To be clear, Mrs. Clinton's actions, and maybe the actions of other administration officials, require a serious and independent criminal investigation.

The courts are taking notice. Last month, a federal court judge did something we had never seen before – U.S. District Court Judge Reggie B. Walton reopened a Judicial Watch Freedom of Information Act (FOIA) lawsuit because of the "new" evidence of Hillary Clinton's hidden emails.

In the meantime, Judicial Watch filed eight lawsuits (including six on one day) against the Obama administration to get answers on the Hillary Clinton email scandal.

Many, including members of both parties in Congress, ask how is it that Judicial Watch gets documents that Congress can't get even under subpoena.

people. And speaking of FOIA reform, Congress should apply the freedom of information concept to itself and the courts, the two branches of the federal government exempt from the transparency laws that presidents must follow.
Founding Father John Adams was keenly aware of the relationship between secrecy and corruption --- and the preservation of liberty:

> Liberty cannot be preserved without a general knowledge among the people, who have a right, from the frame of their nature, to knowledge, as their great Creator, who does nothing in vain, has given them understandings, and a desire to know; but besides this, they have a right, an indisputable, unalienable, indefeasible, divine right to that most dreaded and envied kind of knowledge; I mean, of the characters and conduct of their rulers.

Thank you.