



**ORACLE WAS PRIMARY CAUSE OF OREGON'S
FAILED HEALTH INSURANCE EXCHANGE WEBSITE**

**Democratic Staff
Committee on Oversight and Government Reform
U.S. House of Representatives**

**Prepared for Ranking Member Elijah E. Cummings
May 25, 2016**

<http://democrats.oversight.house.gov/>

EXECUTIVE SUMMARY

This report presents the findings of Democratic staff as part of an investigation by the Committee on Oversight and Government Reform into the failure of Oregon's health insurance exchange website under the Patient Protection and Affordable Care Act.

Based on the evidence obtained by the Committee, this report makes the following findings:

- (1) Oregon's contractor, the Oracle Corporation, was primarily and directly responsible for the failure of the State's health insurance exchange website.
- (2) Oracle failed to deliver a fully functioning website by the October 1, 2013, deadline, or any time thereafter.
- (3) Oracle misled state officials by repeatedly assuring them its work was on track and on schedule when in fact it was riddled with errors.
- (4) Oracle's own officials conceded internally that their work was embarrassingly deficient.
- (5) Independent experts concluded that Oracle's work was so deficient that the State should consider withholding payment.
- (6) The decision to finally abandon Oracle's website was based on the fact that it was less expensive and less risky to switch to the federal technology than to repair Oracle's defective technology.

The Republican staff of the Committee issued their own report today, attempting to shift blame for Oracle's massive failures onto the state and federal governments. However, their report ignores basic facts, disregards Oracle's numerous failures, and downplays or entirely omits key evidence that contradicts their narrative.

For example, the Republican staff report inexplicably disregards repeated admissions from Oracle's own officials conceding that their work failed the "laugh test" and was "so screwed up" that they were "at a loss as to how they could design such a system." It also disregards internal documents in which Oracle officials stated that they were "rapoing [sic] the state [o]f Oregon on something that will never work well," that they should be "publicly flogged for delivering the project to such a tragic status," and that their "blood is boiling thinking of all the irresponsible fools who brought this project to this messy state."

Instead, the Republican staff report attempts to argue that the State's decision to finally abandon Oracle's website was orchestrated by Governor John Kitzhaber's advisers for political reasons rather than to save tens of millions of dollars from being spent in an attempt to address the systemic and profound deficiencies throughout Oracle's website. However, the Republican staff report disregards yet another key fact: every single witness interviewed by the Committee rejected this specious theory.

During the course of the Committee's investigation, Republicans focused primarily on investigating the actions of Oregon officials rather than those of Oracle employees. The Committee obtained approximately 115,000 pages of documents from the state of Oregon, more than 53,000 pages from the former Governor's Chief of Staff, and almost 3,000 pages from the former Governor himself.

In contrast, Oracle produced only 3,200 pages of documents to the Committee.

Similarly, the Committee conducted five depositions and transcribed interviews of officials from the state of Oregon:

- (1) Chief of Staff Michael Bonetto;
- (2) Healthcare Policy Advisor Sean Kolmer;
- (3) Cover Oregon Interim Executive Director Dr. Bruce Goldberg;
- (4) Cover Oregon Interim Chief Information Officer Alex Pettit; and
- (5) Communications Strategist Patricia McCaig

Remarkably, the Committee never conducted a single deposition or transcribed interview with any Oracle employee or official.

Unfortunately, Committee Chairman Jason Chaffetz chose to issue his report as an unofficial staff report rather than as an official report of the Committee. This decision has significant ramifications.

Official Committee reports are governed by House and Committee rules designed to promote accuracy and completeness, while unofficial staff reports are not. For example, unofficial staff reports are not required to be considered, debated, voted on, or approved by the Committee. They are not subject to amendment, and they are not required to include minority or additional views.

For these reasons, the Committee's Ranking Member, Rep. Elijah E. Cummings, wrote to the Chairman on May 20, 2016, requesting that he consider issuing an official report of the Committee instead. Ranking Member Cummings warned of "several key omissions and inaccuracies in the draft staff report," and he explained that the process of vetting and adopting an official Committee report would "ensure that the public has a more complete and accurate understanding of the issues the Committee has been investigating."

The Chairman declined to accept this proposal. Instead, he decided to release his unofficial and flawed Republican staff report without review by other Members of the Committee or the official imprimatur of the Committee.

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
BACKGROUND ON INVESTIGATION	5
I. ORACLE PRIMARILY RESPONSIBLE FOR FAILED WEBSITE	6
A. Oracle Never Delivered Fully Functioning Website	6
B. Oracle Misled State Officials on Website Riddled With Errors	11
C. Oracle’s Own Officials Conceded Work Was Deficient	19
D. Independent Experts Found Oracle’s Work Deficient	21
E. Decision to Abandon Oracle Based on Cost, Risk, and Schedule	23
II. UNSUBSTANTIATED REPUBLICAN CLAIMS	27
A. Governor’s Advisers Did Not Direct Switch to Federal Technology	27
B. Evidence Does Not Support Allegations Against McCaig	35
C. Use of Personal E-mail Not Improper	41

BACKGROUND ON INVESTIGATION

After the Patient Protection and Affordable Care Act was passed by Congress and signed into law by President Obama in 2010, Oregon opted to create its own health insurance exchange to allow Oregonians to enroll in healthcare plans.

The State formed the Oregon Health Insurance Exchange Corporation, also known as Cover Oregon, to manage the health insurance exchange website. Cover Oregon was governed by a nine-member Board of Directors.

The Board hired a contractor—the Oracle Corporation—to create an information technology (IT) platform consisting of the State’s health insurance exchange and a modernized version of the State’s social services technology.

Oracle failed to deliver a fully functioning website by the beginning of the 2014 open enrollment period on October 1, 2013. As a result, the State was forced to spend millions of taxpayer dollars to hire and train staff to manually enroll individuals in healthcare coverage. In the months that followed, Oracle’s technology continued to be plagued with problems and was unable to launch for widespread use by the public.

On April 25, 2014, Cover Oregon’s Board of Directors voted unanimously to switch from Oracle’s IT platform to the federal IT platform, HealthCare.gov. The Board’s decision was based on Oracle’s failure to provide a fully functional website more than six months after the 2014 open enrollment period began, as well as an assessment of the cost, risk, and schedule needed to develop a working website for the upcoming 2015 open enrollment period.

On February 13, 2015, Chairman Chaffetz and Subcommittee Chairmen Jim Jordan, Mark Meadows, and Will Hurd launched an investigation, citing a press report claiming that “the decision to close Cover Oregon may have been based on politics, not policy.” This press report mirrored claims made by Oracle in litigation against the State and Dr. John Kitzhaber, the former Governor of Oregon.

I. ORACLE PRIMARILY RESPONSIBLE FOR FAILED WEBSITE

The documents obtained by the Committee and the depositions and transcribed interviews conducted by Committee staff demonstrate that Cover Oregon's contractor, Oracle, was primarily and directly responsible for the failure of the State's health insurance exchange website.

A. Oracle Never Delivered Fully Functioning Website

The evidence obtained by the Committee demonstrates that Oracle never produced a fully functional website by the statutorily mandated date of October 1, 2013, or at any time thereafter.

On February 10, 2016, Committee staff took the deposition of Michael Bonetto, the Governor's Chief of Staff, during which he described Oracle's failure to provide a fully functional website for months after the target date of October 1:

October 1st came and went with no working Web site, even though we were being promised that. Mid October came and went with, again, a promise that it was going to be up and running. November, same. December, the same. January, the same. February, the same.¹

Mr. Bonetto also had this exchange:

Q: So, to your knowledge, did Oracle ever deliver a fully functioning Web site to the State?

A: No.²

On April 13, 2016, Committee staff took the transcribed interview of Alex Pettit, Cover Oregon's interim Chief Information Officer. Mr. Pettit also stated that Oracle never produced a fully functioning website:

Q: To your knowledge, did Oracle ever deliver a fully-functional operational website to the state that can go live to the public?

A: So the direct answer to that would be no. We never got it to where it could [sic] be consumed by the public.³

¹ House Committee on Oversight and Government Reform, Deposition of Michael Bonetto, at 15 (Feb. 10, 2016).

² *Id.* at 82.

³ House Committee on Oversight and Government Reform, Transcribed Interview of Alex Pettit, at 94 (Apr. 13, 2016).

On April 15, 2016, Committee staff took the deposition of Sean Kolmer, the Governor's Healthcare Policy Advisor. Mr. Kolmer had this exchange with Committee staff:

Q: Oracle has claimed that it produced a fully functional website in February 2014. What is your response to that claim?

A: I never saw a website that worked the way that it was supposed to work.

Q: Do you know whether anyone, besides Oracle, considered the website to be fully functioning and ready for the public's use at any time during the 2014 open enrollment period?

A: Not that I know of.⁴

On April 6, 2016, Committee staff took the deposition of Dr. Bruce Goldberg, Cover Oregon's interim Executive Director, who also confirmed that Oracle never delivered a fully functional website:

Q: As you may be aware, Oracle claims that they produced a fully functional website to the state by the end of February 2014.

A: Yes.

Q: In your opinion and from your review and use of the system, did Oracle produce a fully functioning website to the state by the end of February 2014?

A: No.⁵

The Republican staff report argues, "Documents obtained by the Committee show, however, the website was on track to be fully operational shortly before the decision to switch from Cover Oregon to the federal technology was announced on April 25, 2014."⁶

To the contrary, documents obtained by the Committee show that serious functionality problems with the Oracle technology persisted for months.

On February 27, 2014, Dr. Goldberg sent an e-mail to Governor Kitzhaber articulating the level of functionality that Cover Oregon believed was necessary for "system readiness." Dr. Goldberg titled the body of the e-mail "Cov[er] Oregon vs. oracle perspective." He wrote:

⁴ House Committee on Oversight and Government Reform, Deposition of Sean Kolmer, at 94 (Apr. 15, 2016).

⁵ House Committee on Oversight and Government Reform, Deposition of Bruce Goldberg, at 71 (Apr. 6, 2016).

⁶ House Committee on Oversight and Government Reform, Majority Staff Report, *Cover Oregon: How Mismanagement and Political Interference Squandered \$305 Million Taxpayer Dollars*, at 42 (May 25, 2016).

“Cover Oregon’s perspective of system readiness is that the system can function with a 90+ percent of accuracy for 90-95 percent of the population.”⁷

Dr. Goldberg was not stating that the website was actually functioning at this level, but rather that Cover Oregon believed it would have been sufficient if it had been. Dr. Goldberg explained his e-mail during his deposition with Committee staff:

So this was my perspective on when a system—when our system would be ready. It in no way said that this is the functioning of the system right now. Had it been, we would have gone live.⁸

The Republican staff report describes Dr. Goldberg’s testimony by arguing, “During his deposition, Goldberg testified that the portal worked at times.”⁹ In fact, Dr. Goldberg testified that the Oracle technology worked only half of the time:

Q: Were you saying here that the Oracle created website is functioning at about 50 percent at the time of this e-mail, which is the end of February 2014?

A: Yes, about at [sic] time that was approximately how well it was working. About half the time someone could enroll and about half the time someone couldn’t.

...

Q: Was it Oracle’s position that a website working only half the time was sufficient?

A: Yes. They thought that that was going to be okay. And, you know, the issue was a couple of fold: One, as—we had a process that was working and, as you can imagine, if someone tried to enroll and they got one of those stops, they would have been informed to call customer service. We would have had to staff up and hire hundreds of people to answer the telephones. And then the issue is we couldn’t fix it. I mean, it wasn’t as if then you could say, “Oh, let’s just do this,” so you would have actually had to have people go and start the same paper process that everyone else was using. So in order to go live, it had to be better than what we were doing at the time. That simply wasn’t going to be better. It was going to be more frustrating for consumers, more confusing to tell people, “Oh, there’s a website. You can enroll,” and then to have them get on it and not

⁷ E-mail from Bruce Goldberg, Interim Executive Director, Cover Oregon, to John Kitzhaber, Governor of Oregon (Feb. 27, 2014).

⁸ House Committee on Oversight and Government Reform, Deposition of Bruce Goldberg, at 68 (Apr. 6, 2016).

⁹ House Committee on Oversight and Government Reform, Majority Staff Report, *Cover Oregon: How Mismanagement and Political Interference Squandered \$305 Million Taxpayer Dollars*, at 45 (May 25, 2016).

enroll, that would not have been a good thing to put forward for consumers. So it was wasn't working.¹⁰

Dr. Goldberg also explained:

I would say it worked part of the time. Some of the agents I talked to indicated that it worked fairly well; others had some complaints. It was kind of a thing whereby with agents and community partners, the first time they used it, there was a greater error rate. They could be coached about how to do certain things that help make it work that made it more successful.¹¹

On May 28, 2014, Mr. Pettit sent an e-mail to staff at Cover Oregon and the Governor's office, writing:

With Oracle purporting that the ap[plication] can go live, the numbers refute her assertion. Although one could argue that every big [sic] would not need to be corrected before go-live, there are clearly far too many sev[erity] 1 and 2 errors to go live. And this is not the final bug list. It was produced from using the smaller number of test cases than the CMS recommended testing surface of 295 instances. Thus, we expect to find more bugs and will report same to this committee when we are done with development in a few weeks.¹²

Mr. Pettit described the state of the Oracle technology in this exchange:

Q: Is it normal to have seven to eight hundred Severity 1 errors—

A: No, sir.

Q: —at that time?

A: No, sir, not on something that goes—that you would release to the public, no, sir.

Q: Okay. So does this mean that Oracle did not provide, as it claimed, a fully-functioning website in February of 2014?

A: I would say that the website that was provided was not fully functioning, yes, sir.¹³

¹⁰ House Committee on Oversight and Government Reform, Deposition of Bruce Goldberg, at 69-74 (Apr. 6, 2016).

¹¹ *Id.* at 149.

¹² E-mail from Alex Pettit, Interim Chief Information Officer, Cover Oregon, to Cover Oregon and Governor John Kitzhaber's Office Staffs (May 28, 2014).

¹³ House Committee on Oversight and Government Reform, Transcribed Interview of Alex Pettit, at 78 (Apr. 13, 2016).

Mr. Bonetto had this exchange during his deposition:

Q: So, to your knowledge—so you’re saying that Bruce was constantly testing the Web site and Bruce—so Bruce was constantly testing the Web site and found errors in the system, correct?

A: Correct.

Q: And so would you say that you disagree with Oracle’s claim that the Web site was functioning at any time?

A: Correct.¹⁴

After Oracle’s failure to deliver a fully functional website, Oregon initiated a “hybrid” process for enrolling individuals in health insurance, using trained staff to process paper applications through the functioning portion of Oracle’s system. Oregon manually enrolled more than 300,000 individuals in health insurance plans from October 2013 to March 2014.¹⁵

Mr. Bonetto explained during his deposition:

Q: And, during that time, do you know how people were registering or enrolling in health care during that time?

A: That became a manual paper process.

Q: And when you say “manual,” what do you mean?

A: That people had to fill out a paper application and submit that to Cover Oregon.¹⁶

Mr. Kolmer described the manual enrollment process to Committee staff in this exchange:

Q: Can you describe how the website was rolled out, beginning with what happened on October 1, 2013, how the website was used on that date, until the portal was launched for agents and community partners?

¹⁴ House Committee on Oversight and Government Reform, Deposition of Michael Bonetto, at 81 (Feb. 10, 2016).

¹⁵ House Committee on Oversight and Government Reform, Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs and Subcommittee on Energy Policy, Health Care, and Entitlements, Testimony of Greg Van Pelt, President, Oregon Health Leadership Council, *Hearing on Examining ObamaCare’s Problem-Filled State Exchanges* (Apr. 3, 2014).

¹⁶ House Committee on Oversight and Government Reform, Deposition of Michael Bonetto, at 75 (Feb. 10, 2016).

A: To the best of my knowledge, it was essentially a static website, that people could print a PDF and then submit it, and then there would be a whole host of manual processes to actually determine somebody eligible and then enroll them into coverage, whether that be commercial coverage or Medicaid.¹⁷

He further explained in this exchange with Committee staff:

A: [B]ecause the Oracle system never worked and because we never had a fully functioning website, we had to manually process every application we got, not only for commercial health insurance but also for Medicaid.

Q: And what did that mean, “manually process”?

A: We had to hire over 200 people. We had to use faxes and copy machines and paper to do eligibility and enrollment into health insurance.¹⁸

Dr. Goldberg described the additional resources required to support the manual enrollment process:

We hired several hundred people to do that work. It was—it was a tremendous amount of interest in the insurance exchange. We had—you know, we ended up enrolling, I believe, close to a hundred thousand people through that process. We also enrolled several hundred thousand people in Medicaid. In fact, the state enrolled, you know, one of the highest numbers of people. But it was a very labor intense process and we, yes, we had to hire a lot of people to do that.¹⁹

Dr. Goldberg explained that the State spent “several million dollars” to hire and train additional staff to enroll Oregonians using the manual process.²⁰ The State hired and trained 382 temporary staffers to manually enroll Oregonians in health insurance plans, and it incurred additional costs of approximately \$7 million by the end of March 2014 to support its hybrid enrollment process.²¹

B. Oracle Misled State Officials on Website Riddled With Errors

The evidence obtained by the Committee shows that Oracle misled state officials by repeatedly assuring them its work was on track and on schedule when, in fact, it was riddled with errors even after the website launch date was delayed month after month.

¹⁷ House Committee on Oversight and Government Reform, Deposition of Sean Kolmer, at 28-29 (Apr. 15, 2016).

¹⁸ *Id.* at 91.

¹⁹ House Committee on Oversight and Government Reform, Deposition of Bruce Goldberg, at 73 (Apr. 6, 2016).

²⁰ *Id.*

²¹ E-mail from Patty Wentz, Communications Director, Oregon Health Authority, to Patricia McCaig and Tim Raphael (Apr. 3, 2014).

According to an independent assessment, Cover Oregon conducted an internal end-to-end test on September 28, 2013—three days before the scheduled launch of the website—that failed.²² During his deposition, Mr. Kolmer had this exchange regarding the failed test:

Q: And were you aware that the test failed?

A: I was aware that it failed.

Q: What was your reaction to that?

A: Astonishment, disbelief, 'cause everything that we had heard, that I had heard up to this point was things were on track, don't worry, it was going to work.

Q: You had heard that from?

A: From the Cover Oregon team, the Oregon Health Authority team, who was hearing it from the contractors, Oracle specifically, who was building the website.²³

On October 17, 2013, Garrett Reynolds, Cover Oregon's Chief Technology Officer, wrote an e-mail to Aaron Karjala, Cover Oregon's Chief Information Officer, describing various problems after running an assessment. He wrote that Oracle "responded with assurances that they would address all of the critical issues prior to Oct go live. To date, there have been few if any issues addressed from the review." The e-mail continued:

The review shows that the Oracle development team's quality of the work was atrocious and that they broke every single development best practice that Oracle themselves have defined. It is one of the worst assessments I have performed in my 18 years of Siebel work. The issues are prevalent across basic development best practices, through to poor design and into even worse code implementation. The issues span the breadth of areas of impact: Inefficient or ineffective design[,] Data integrity[,] Runtime error[,] Performance[,] Usability and user interface[,] Application maintenance[,] Application upgrade[,] and] Security.²⁴

Mr. Reynolds followed up with an e-mail on November 6, 2013, to Paul Van Amsterdam, Oracle's Senior Director of Cloud Transition Management, expressing frustration over the flaws in the system. The e-mail was later elevated to Oracle's CEO, Larry Ellison, and Oracle's President, Safra Catz, stating:

²² First Data, *Cover Oregon Website Implementation Assessment: Assessment Report* (Apr. 23, 2014).

²³ House Committee on Oversight and Government Reform, *Deposition of Sean Kolmer*, at 77 (Apr. 15, 2016).

²⁴ E-mail from Garrett Reynolds, Chief Technology Officer, Cover Oregon, to Aaron Karjala, Chief Information Officer, Cover Oregon (Oct. 17, 2013).

I cannot believe that Oracle can be onsite at this project. I find it hard to believe that Oracle Executive Management has not come onsite personally and is not on top of these issues doing everything possible to prevent a nightmare PR scenario for themselves. If it were up to me CO [Cover Oregon] would stop paying all invoices until full resolution and reparation has been made by Oracle. Oracle has failed in every single aspect of the project from project management, proper design and development all the way through delivery and deployment. Oracle should be embarrassed at the OCS [Oracle Consulting Services] team leadership and what has been delivered at Cover Oregon.²⁵

On November 16, 2013, Senator Jeff Merkley's Chief of Staff wrote an e-mail to Mr. Bonetto reporting on a conversation between Senator Merkley and Ms. Catz:

Senator spoke to Safra Katz, [O]racle's president yesterday afternoon. She said that she was mortified at how badly things have gone, that she just learned how badly that was recently and they are known for delivering. ... They believe the site will be functioning and able to process applications on 12/9.²⁶

On November 19, 2013, Cover Oregon's former Executive Director, Rocky King, sent an e-mail to Oracle's Chief Corporate Architect, Edward Screven, writing:

At Oracle's request, we have continually cut initial launch scope over the last 4 months in an attempt to bring up the basic portal site. Additionally, as various functionalities have been brought into the FTS environment for testing and just plain visual review new blockers or critical defects have been surfaced. So while I support 'drawing the line' I just think it is important to say that we have [sic] moving that line (in the broadest sense) continually in support to bring up the 'basic' portal functionality.²⁷

The Republican staff report claims that community partners and agents were successfully using the technology developed by Oracle to enroll Oregonians in healthcare coverage in early 2014.²⁸

Documents obtained by the Committee, however, indicate that even after Oregon initiated a "hybrid" process for enrolling individuals in health insurance, using trained staff to process paper applications through the functioning portion of Oracle's system, significant website errors remained.

²⁵ E-mail from Garrett Reynolds, Chief Technology Officer, Cover Oregon, to Paul Van Amsterdam, Senior Director of Cloud Transition Management, Oracle Corporation (Nov. 6, 2013).

²⁶ E-mail from Chief of Staff, Senator Jeff Merkley, to Michael Bonetto, Chief of Staff, Governor John Kitzhaber (Nov. 16, 2013).

²⁷ E-mail from Rocky King, Executive Director, Cover Oregon, to Edward Screven, Chief Corporate Architect, Oracle Corporation (Nov. 19, 2013).

²⁸ House Committee on Oversight and Government Reform, Majority Staff, *Cover Oregon: How Mismanagement and Political Interference Squandered \$305 Million Taxpayer Dollars*, at 8 (May 25, 2016).

Dr. Goldberg explained that the website's launch to community partners and agents did not mean it was functioning adequately:

Stage launch meant that on October 1 was open the agents and community partners and then a couple of weeks later to open to the general public. And the reason for that was agents were a smaller universe. You wouldn't have had a hundred thousand people coming onto the website. It would have been, you know, maybe two, 3,000; and that this would be a great way to be able to work out some of the bugs and test things, particularly, also with people who you could communicate with and then open it up to the general public two or three weeks later.²⁹

Mr. Pettit also described to Committee staff how having the functionality for community partners and agents did not equate to the full functionality necessary for public use:

Q: So can you describe the differences between a portal that was being used the agents and community partners and a portal that would have been used by individuals if it had been open to individuals?

A: Well, they were actually the same. There wasn't going to be different portal for a community—I mean for a—

Q: Individuals?

A: Yes, ma'am. It was the same portal. It was just that with the agents and the community partners, I had a 75-page manual. I could say, Here, this is what you need to know to navigate your way through the application. ... I could train the same people if you did a repetitive task how to do something. I couldn't train users in the wild.³⁰

On February 11, 2014, David Ford, a Cover Oregon Project Planner, sent an e-mail to Dr. Goldberg, Oracle staff, and others, sharing notes from a "1:00PM Status Call." Mr. Ford wrote:

Troubleshooting continues for Cherry Avenue/5503 (people doing manual application processing). ... About 50% of users are affected. The three symptoms may or may not be caused by the same problem.³¹

Several witnesses explained that state officials relied on repeated assurances by Oracle that the website was "on track" to launch. Mr. Bonetto and Nkenge Harmon Johnson, the Governor's Communications Director, created a timeline of key dates and meetings related to the

²⁹ House Committee on Oversight and Government Reform, Deposition of Bruce Goldberg, at 57 (Apr. 6, 2016).

³⁰ House Committee on Oversight and Government Reform, Transcribed Interview of Alex Pettit, at 48-49 (Apr. 13, 2016).

³¹ E-mail from David Ford, Project Planner, Cover Oregon, to Bruce Goldberg, Interim Executive Director, Cover Oregon, et al. (Feb. 11, 2014).

State's health insurance exchange starting almost one year before the October 1, 2013, launch date through December 2, 2013.³²

Referring to this timeline, Mr. Bonetto explained to Committee staff that he was repeatedly informed that the project was on track until just a week before it was supposed to launch:

Q: I'm going to read what's written beside May 29th. "Briefing meeting on IT project with Sean Kolmer, Mike Bonetto, Rocky King, Aaron Karjala, Erinn Kelley-Siel, Bruce Goldberg and Carolyn Lawson. Update: On track." ...

...

You mentioned, or you wrote, "Update: On track." On track for what? What does that mean?

A: That refers to on track for an April 1, 2013, launch date.

Counsel: October 1?

A: October 1.

Q: And did "on track" pertain to Oracle's work in creating the State exchange Web site?

A: Correct.

Q: So does that mean Oracle was on track to produce the Web site by October 1st, 2013, as you just said?

A: Correct.

...

Q: So did someone from Oregon Health Authority or Department of Human Services explain why they believed the IT project was on track, as you noted?

A: As I recall, this was, you know, information that they had at the time, believing that, you know, based on the scope and the time, that they believed that they were going to be able to accomplish this.

Q: Was this based on conversations with Oracle?

A: I believe so.

³² E-mail from Nkenge Harmon Johnson, Communications Director, Governor John Kitzhaber, to John Kitzhaber, Governor of Oregon, et. al (Jan. 19, 2014).

...

Q: I'm going to draw your attention to the same page but to the June 3rd, 2013, date. I will read as you follow along. It says, "Rocky King briefs Mike Bonetto and Bruce Goldberg that the interface connections with insurance carriers is behind schedule and that Medicaid eligibility and enrollment may need to be modified to only a Medicaid assessment." What were you referring to here?

A: I believe that that was the first time that the discussions of kind of modifying the scope or decreasing the scope in order to meet the October 1 timeframe.

Q: So was Medicaid eligibility and enrollment part of the same IT project as the State's health insurance exchange Web site?

A: Correct.

Q: Was Oracle working on this Medicaid system?

A: Correct.

Q: So, under this note, you mentioned that the interface connections with insurance carriers was behind schedule. Were you concerned at all that part of the IT project was behind schedule?

A: This was the first time that we were notified by Rocky that they were behind to this degree. So, yes, concerned.

Q: Did that raise concerns that the other parts of the IT project, such as the State exchange Web site, were possibly behind schedule?

A: At the time, yes. But I would just follow up that the subsequent meetings we had then identified and they confirmed that they were on track.

Q: Okay. So why didn't you question whether the creation of the State exchange was behind schedule?

A: We were notified on June 3rd that there were concerns that they were behind schedule, but then, again, 2 weeks later, they came back and said that they were on track.

Q: Okay. Let me draw your attention to the next page, Bates stamped GOV_HR0005352. If you go to date June 19th, 2013, I'll read as you follow along. It says, "Briefing meeting on IT project with Sean Kolmer, Mike Bonetto, Rocky King, Aaron Karjala, Erinn Kelley-Siel, Bruce Goldberg and Carolyn Lawson. Update: On track." Did I read that correctly?

A: Correct.

Q: So here, what does “on track” mean?

A: Again, for an October 1 launch date.

Q: And this “on track” pertained to Oracle’s work on the State exchange?

A: Correct.

Q: So who told you at this meeting that the IT project was on track?

A: Again, I believe that was a combination of consensus from this group.

....

Q: Would that be based on representations from Oracle?

A: I believe so, yes.

....

Q: Okay. And now I’d like to move down to the July 12, 2013, date on the timeline, same page. It reads, “Briefing meeting on IT project with Sean Kolmer, Mike Bonetto, Rocky King, Aaron Katjala, Erinn Kelley-Siel, Bruce Goldberg and Carolyn Lawson. Update: On track. Bonetto and Kolmer inform Governor.” Again, what does “on track” mean here?

A: On track for an October 1st launch.

....

Q: And do you know who at this meeting informed you that the IT project was on track?

A: Again, these meetings really were from everybody, a group consensus that this project was on track.

Q: Okay. Was the consensus based on representations from Oracle?

A: I believe so, yes.

Q: Okay. And you note under the July 27th [sic], 2013, date that you and Sean Kolmer informed the Governor. Why did you inform the Governor?

A: I believe this may have been specifically in writing. I don’t recall. But we kept him, you know, continually updated on this progress.

Q: Okay. And why did you keep him continuously updated on this?

A: This was a project of great magnitude and concern for the State that he wanted to understand where we were.

....

Q: And was there anything unusual about the Governor being briefed on matters that were important to his constituents?

A: No.

Q: Had he expressed any concern—had the Governor expressed any concern about the status of the IT project and Oracle's work?

A: No.

....

Q: Let me direct your attention to the September 16, 2013, date on the timeline. The page is GOV_HR00053523. I'll read the bullet beside the date. It says, "House Health Care Committee: Update on Cover Oregon by Rocky King where he explains launch strategy and staged launch. Presentation slide: 'Bottom Line: We are on Track to Launch.'"

....

Q: And was it your understanding that Rocky King was relaying what Oracle had told him during this meeting on the status of the project?

A: Yes, I believe so.³³

Mr. Kolmer concurred in his discussion with Committee staff:

Q: And in the summer months leading up to October 1st, generally speaking, what were you hearing from Rocky King and others at Cover Oregon and those at OHA about how the website was coming along?

A: It was a high-risk project, it was a high-risk project the moment they started, but we're on track. We're assured by our contractors and by our IT folks that we're on track.³⁴

³³ House Committee on Oversight and Government Reform, Deposition of Michael Bonetto, at 57-70 (Feb. 10, 2016).

³⁴ House Committee on Oversight and Government Reform, Deposition of Sean Kolmer, at 70 (Apr. 13, 2016).

C. Oracle's Own Officials Conceded Work Was Deficient

Internal e-mails obtained by the Committee show that Oracle officials knew there were massive problems with their work on behalf of the State.

After missing the October 1, 2013, launch date, Oracle brought in its Fusion Middleware Architecture Team—also known as the A-Team—comprised of Oracle's top technical experts.

On October 16, 2013, Stefan Krantz, Oracle's Director of Engineering—Portal and Middleware Tooling, and Christopher Johnson, Oracle's Consulting Solution Architect for the Fusion Middleware A-Team, sent an e-mail to the other A-Team members, writing:

We consider the [Cover Oregon] account to be in a critical situation and the deadline for 30th of October is at risk. We also understand that several use cases has not yet been tested in a production like environment (clustered). We have also found out that Cover Oregon project is currently still in active development mode and a substantial set of features are yet to be delivered. This has limit[ed] our ability to fully understand how complete they actually are. In the past 2 days we have not managed to test more than 2 pages of the first use case. ... In addition the OCS team on the ground does appear to be as concerned as we they should be.³⁵

On the same day, Brian Eidelman, Oracle's Director of the Fusion Middleware A-Team, responded to Mr. Krantz's e-mail, writing:

Just to add to what Stefan is saying, I think there is additional concern that things may not be OK even from a functional perspective for the consumer release (as in they aren't done developing) and that there are rumors of other production environment issues (clustering not working so running on single node "clusters").³⁶

On October 17, 2013, Mikael Ottosson, Oracle's Vice President of Product Development, wrote that "things are getting worse, not better," according to the team working in Oregon.³⁷ Pardha Reddy, Oracle's Senior Director, responded:

OCS people out [sic] to be publicly flogged for delivering the project to such a tragic status after multiple onsite visits by various A-team members, written reports, phone calls

³⁵ E-mail from Stefan Krantz, A-Team Director and Director of Engineering—Portal and Middleware Tooling, and Christopher Johnson, Consulting Solution Architect for the Fusion Middleware A-Team, Oracle Corporation, to A-Team members (Oct. 16, 2013).

³⁶ E-mail from Brian Eidelman, Director, Fusion Middleware A-Team, Oracle American, Inc., to Mikael Ottosson, Vice President of Product Development, Oracle Corporation (Oct. 16, 2013).

³⁷ E-mail from Mikael Ottosson, Vice President of Product Development, Oracle Corporation, to A-Team Members (Oct. 17, 2013).

to help them get out of this mess. Still, neither the consultants onsite nor the management in OCS did any thing when we warned them.³⁸

On October 18, 2013, Mr. Reddy e-mailed Mr. Johnson to further describe his frustration: “my blood is boiling thinking of all the irresponsible fools who brought this project to this messy state and now we have to suffer for them.”³⁹

In November 2013, an internal presentation detailed the A-Team’s findings after a review of Oracle’s work. The team found that the system consisted of “~40 security bugs;” “Fails the ‘laugh test’” with “basic errors;” contains “Evidence of poor coding practices;” and has “significant issues” after taking a quick look at the production environment. The A-Team concluded: “Can infer no level of assurance based on current results.”⁴⁰

On November 22, 2013, Herbert Holger, Oracle’s Director of Product Management, e-mailed Chris Osterdock, Oracle’s Senior Principal Applications Engineer, and Mark Breslauer, Oracle’s Senior Director of Software Development, writing: “They have an army of OCS folks (200) raping [sic] the state [o]f Oregon on something that will never work well.”⁴¹

On November 24, 2013, Chris Osterdock, Oracle Senior Principal Applications Engineer, sent an e-mail to Mark Breslauer, Senior Director of Software Development, writing:

This implementation is so screwed up[, s]ome key points: All touchpoints are synchronous[.] There is no guaranteed delivery of messages[,] they do not use JMS or Mqueue[,] all web services are submitted over HTTP[,] if they fail or if a server is down[,] that is it. Everything is integrated together with web services[,] tightly coupled[,] which is bad[,] this should be loosely coupled via JMS messaging. When something fails[,] no one knows where[,] you cannot retry the message due to the above. Now I cannot help with the above[,] that is a fundamental architecture design issue. I’m really at a loss as to how they could design such a system. ... I’m just scratching my head here. ... it is really bad.⁴²

³⁸ E-mail from Pardy Reddy, Senior Director, Oracle Corporation, to A-Team Members (Oct. 17, 2013).

³⁹ E-mail from Pardy Reddy, Senior Director, Oracle Corporation, to Christopher Johnson, Consulting Solution Architect for the Fusion Middleware A-Team, Oracle Corporation (Oct. 18, 2013).

⁴⁰ *Corporate Architecture Group/Oracle Labs, Security Review Findings: Cover Oregon/OrHix*, Oracle Corporation (Nov. 2013)

⁴¹ E-mail from Herbert Holger, Director of Product Management, Oracle Corporation, to Chris Osterdock, Senior Principal Applications Engineer, Mark Breslauer, Senior Director of Software Development, and Bharathi Ramajayam, Engineering Manager, Oracle Corporation (Nov. 22, 2013).

⁴² E-mail from Chris Osterdock, Senior Principal Applications Engineer, Oracle Corporation, to Mark Breslauer, Senior Director of Software Development, Oracle Corporation, (Nov. 24, 2013).

D. Independent Experts Found Oracle’s Work Deficient

Documents and testimony obtained by the Committee show that independent, third-party analyses identified serious deficiencies with Oracle’s work on the website and raised significant concerns about Oracle’s ability to achieve a fully functional website.

Maximus

The State hired an independent third party consultant called Maximus to assess Oregon’s health insurance exchange project. During his deposition, Mr. Bonetto explained Maximus’ role:

Q: And who is Maximus?

A: Maximus was a third party risk management consulting firm.

Q: Okay. And do you know why Cover Oregon hired Maximus?

A: They hired them as a kind of neutral third party to give them feedback on their progress.

Q: Okay. And would you consider Maximus employees to be experts in their field, in quality assurance?

A: From my understanding, yes.

Q: Okay. And what exactly did Maximus do for Cover Oregon?

A: I believe they gave them ongoing feedback and evaluation from a quality assurance standpoint, you know, from a project standpoint of being on time and within budget.⁴³

Mr. Pettit described how Maximus’ role grew as the project continued:

They were hire[d] to be the quality assurance, quality control vendor initially. That was their role, was to assist in the oversight of the project. As it continued, they also assume testing activities, became a contractor for testing for the exchange. So they participated in testing of the application as it was being—as it was moving from the development environment to the what we call the FTS or Functional Testing System and then into production.⁴⁴

⁴³ House Committee on Oversight and Government Reform, Deposition of Michael Bonetto, at 138 (Feb. 10, 2016).

⁴⁴ House Committee on Oversight and Government Reform, Transcribed Interview of Alex Pettit, at 142 (Apr. 13, 2016).

On October 28, 2013, Maximus submitted its September 2013 monthly status report, which stated:

Oracle continues to underperform. It is recommended that CO [Cover Oregon] withhold payment of any invoices until a thorough review the contract is conducted by DOJ for lack of performance.⁴⁵

On December 17, 2013, Maximus submitted its November 2013 monthly status report, which stated:

Continued missed delivery dates by Oracle through the month of Nov continue to make stake holder management and [sic] issue. ... Based on Oracle's inability to estimate work and meet system release dates, CO [Cover Oregon] should consider developing an outbound communications strategy that acknowledges this situation.⁴⁶

On March 15, 2014, Maximus submitted its February 2014 monthly status report, which stated: "Oracle's inability to properly estimate the work and delivery with high quality for any release continues to affect the system delivery."⁴⁷

First Data

In addition to Maximus' quality assurance work, First Data was hired by Governor Kitzhaber in January 2014 "to conduct an independent, third party review of the state's health insurance exchange website project."⁴⁸

In his deposition, Dr. Goldberg had this exchange regarding the Governor's decision to have another review of the website project:

Q: Do you know why the governor wanted to have yet another independent third party review of the website project?

A: It wasn't working and he wanted to learn more about why it wasn't and what we could learn from this.⁴⁹

⁴⁵ Maximus, *Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report: September 2013* (Oct. 28, 2013).

⁴⁶ Maximus, *Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report: November 2013* (Dec. 17, 2013).

⁴⁷ Maximus, *Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report: February 2014* (Mar. 15 2014).

⁴⁸ First Data, *Cover Oregon Website Implementation Assessment: Assessment Report* (Apr. 23, 2014).

⁴⁹ House Committee on Oversight and Government Reform, *Deposition of Bruce Goldberg*, at 124 (Apr. 6, 2016).

On April 23, 2014, First Data issued a report summarizing its assessment of the website's failed implementation. First Data found:

[T]he amount of Oracle software customization required has been significantly more than anticipated. Although the Oracle software was reported to meet 95% of the original requirements without customization, a HIX-IT Project Assessment Report from May 2013 estimated the system to be 60% COTS [commercial-off-the-shelf] and 40% custom configuration.⁵⁰

E. Decision to Abandon Oracle Based on Cost, Risk, and Schedule

Evidence obtained by the Committee indicates that the Board's decision to switch to the federal technology on April 25, 2014, followed an assessment of the cost, risk, and time involved to transition to the different options available.

In March 2014, Dr. Goldberg and Governor Kitzhaber convened a group of information technology experts and health insurance industry executives to make a recommendation to the Cover Oregon Board of Directors regarding the future direction of the State's health insurance exchange website.

Documents and testimony obtained by the Committee indicate that the Technology Options Workgroup—which met seven times between March 11 and April 24, 2014—relied on independent analyses to assess ten different technology options for achieving a fully functional website before recommending to the Board that the State transition to the federal technology.⁵¹

At his deposition on April 6, 2016, Dr. Goldberg explained that the Workgroup assessed each technology option in terms of cost, risk, and schedule:

I think those were the big issues one needed to consider. Could we do it; could it be done within the—we knew what the deadline was, November 1. Could we do it? I mean, what was the risk with this work? We had just been through an option that didn't work. So would this work? Was it going to meet the, now November 1, 2014, deadline. And then the other issue was, you know, could we afford it, what is the cost? I think those are pretty standard criteria to evaluate issues at a high level.⁵²

On May 8, 2014, the Workgroup issued a final report summarizing its assessments of the available technology options and recommendation to the Cover Oregon Board. The Workgroup reported that transitioning to the federal technology was the lowest risk and most affordable option, and it could be completed before the 2015 open enrollment period:

⁵⁰ First Data, *Cover Oregon Website Implementation Assessment: Assessment Report* (Apr. 23, 2014).

⁵¹ Department of Administrative Services, State of Oregon, *Cover Oregon Final Report* (May 8, 2014).

⁵² House Committee on Oversight and Government Reform, Deposition of Bruce Goldberg, at 132 (Apr. 6, 2016).

Enrollment, renewal, and change of circumstance functionality are currently available through the FFM [federally-facilitated marketplace], providing the lowest risk option to Oregon. All functionality will be available before November 2014, and the preliminary cost estimate from Deloitte of \$4MM-6MM is within available Cover Oregon resources.⁵³

With respect to the option of keeping the Oracle technology, the Workgroup reported:

[T]he total level of effort to achieve stabilization completion of the current enrollment solution, and development of new functionality to support renewal and change of circumstance is 390,000 hours. At \$200/hr blended rate, the cost to Oregon was estimated to approach \$78MM, which does not include the core costs of hardware, software, licensing, and staff that Cover Oregon currently supports.⁵⁴

The report continued:

In summary, the timeline necessary introduces substantial risk to the project while assuming capabilities which Cover Oregon does not currently have, and allows little margin for error. Not all the necessary functionality can be completed by the November 2014 deadline. Finally, this option exceeds the resources of Cover Oregon. This option failed the reasonable gap analysis trigger previously identified.⁵⁵

Mr. Pettit discussed the Workgroup's preliminary recommendation to pursue a "dual path" of developing the Oracle technology while simultaneously researching the option of transitioning to the federal technology. He stated that necessary triggers were not met, causing the Workgroup's recommendation to change before being handed to the Board. He had this exchange with Committee staff:

Q: So you also note in the report the preliminary recommendation, and you described this earlier as a dual path. Why was this a preliminary recommendation by the workgroup?

A: Well, it was preliminary because our expectation was that as we worked both paths simultaneously, it would become clear at some point which way we should go: Yes, we're going to get this done in the time and money and with the scope that we need or we need to abandon this and go to the federally facilitated marketplace. So there was going to be, if you will, a final—and we laid it out somewhere, I think, in some of the work papers, but there was going to be a final go, no go decision on developing the code. If the other 10—after 100 days, if none of the 10 triggers—if we had passed all the triggers without throwing them,

⁵³ Department of Administrative Services, State of Oregon, *Cover Oregon Final Report* (May 8, 2014).

⁵⁴ *Id.*

⁵⁵ *Id.*

then a final go, no-go decision would be made, a recommendation by the committee would be to the board to finish the application development.

Q. And were all the triggers met in this case?

A. No, ma'am, they were not.⁵⁶

At his deposition, Mr. Kolmer also described the Workgroup's process of moving from the preliminary recommendation to the final recommendation, noting that key milestone triggers were not met:

Q: So in your own words, what was the group's preliminary recommendation?

A: Bring in a new contractor to fix the technology that never worked that Oracle built; if it could be fixed in 100 days with specific milestones and deliverables, we would stay that course, but the second that one of those milestones is missed, then we would transition the commercial enrollment functions to the FFM [federally-facilitated marketplace].

...

Q: Do you know whether the milestones that were set in the 100-day plan were met?

A: They were not met.⁵⁷

On April 24, 2014, the Workgroup unanimously recommended to Cover Oregon's Board of Directors that the State abandon Oracle's failed website and transition to the federal technology.⁵⁸

The Republican staff report argues, "The Governor's office and Kitzhaber's campaign advisers undermined the work of the Technology Options Workgroup and manipulated the process toward their preferred outcome—moving to HealthCare.gov."⁵⁹

In fact, witnesses interviewed by the Committee explained that the Workgroup's recommendation was based on facts. Dr. Goldberg had this exchange during his deposition:

⁵⁶ House Committee on Oversight and Government Reform, Transcribed Interview of Alex Pettit, at 173-174 (Apr. 13, 2016).

⁵⁷ House Committee on Oversight and Government Reform, Deposition of Sean Kolmer, at 156-158 (Apr. 15, 2016).

⁵⁸ Department of Administrative Services, State of Oregon, *Cover Oregon Final Report* (May 8, 2014).

⁵⁹ House Committee on Oversight and Government Reform, Majority Staff, *Cover Oregon: How Mismanagement and Political Interference Squandered \$305 Million Taxpayer Dollars*, at 13 (May 25, 2016).

Q: To your knowledge, did any of the governor's advisors instruct the workgroup to disregard the other technology alternatives?

A: No. I always felt that this group was, you know, a group of primarily technical people, which is what you wanted, and they took this very seriously and asked a lot of questions. They scheduled telephone calls with experts from around the country from time to time.

...

Q: To your knowledge, did any of the governor's advisors ever instruct the technology workgroup to make the recommendation to switch from the state exchange to the federal technology?

A: Not that I'm aware of.

Q: To your knowledge, did the governor or his staff ever instruct the technology workgroup to make the recommendation to switch from the state exchange to the federal technology?

A: Not that I'm aware of.⁶⁰

Mr. Pettit had this exchange during his interview with Committee staff:

Q: To your knowledge, did any of the governor's advisors ever instruct the technology workgroup to make their recommendations to switch from the state exchange to the federal technology?

A: No, ma'am.

Q: And, to your knowledge, did the governor or his staff ever instruct the workgroup to make the recommendation to switch from the state exchange to the federal technology?

A: No, ma'am.⁶¹

⁶⁰ House Committee on Oversight and Government Reform, Deposition of Bruce Goldberg, at 140-141 (Apr. 6, 2016).

⁶¹ House Committee on Oversight and Government Reform, Transcribed Interview of Alex Pettit, at 182 (Apr. 13, 2016).

II. UNSUBSTANTIATED REPUBLICAN CLAIMS

A. Governor's Advisers Did Not Direct Switch to Federal Technology

The Republican staff report argues, “Kitzhaber and his team of political operatives, including his official staff and campaign advisers, took advantage of a management gap at Cover Oregon and inserted themselves into the decision-making process at Cover Oregon.”⁶²

However, all witnesses questioned by Committee staff stated repeatedly and unequivocally that the Cover Oregon Board of Directors was entrusted with the decision to switch to the federal technology. For example, Mr. Bonetto had this exchange with Committee staff:

Q: So was it the board's responsibility to decide the direction of the State exchange? Is that what you're saying?

A: Yes.

Q: It was the board's ultimate decision—

A: Yes.

Q: —to decide the fate of the State exchange.

A: Yes.⁶³

Mr. Pettit agreed during his interview in this exchange:

Q: And it was the board's ultimate decision on what the state would use for their technology alternative. Correct?

A: Yes, ma'am.⁶⁴

Similarly, Mr. Kolmer had this exchange with Committee staff:

Q: Do you know who made the ultimate decision to switch to the federal technology?

A: The Cover Oregon board.⁶⁵

⁶² House Committee on Oversight and Government Reform, Majority Staff, *Cover Oregon: How Mismanagement and Political Interference Squandered \$305 Million Taxpayer Dollars*, at 60 (May 25, 2016).

⁶³ House Committee on Oversight and Government Reform, Deposition of Michael Bonetto, at 51-52 (Feb. 10, 2016).

⁶⁴ House Committee on Oversight and Government Reform, Transcribed Interview of Alex Pettit, at 164-165 (Apr. 13, 2016).

Mr. Kolmer also had this exchange with Committee staff:

Q: And can you describe the role of the governor's office in deciding that Cover Oregon should switch from the state supported IT platform to healthcare.gov?

A: It wasn't the governor's decision.⁶⁶

Dr. Goldberg had this exchange with Committee staff:

Q: Just to be clear: Who had the ultimate decision making authority to switch from the state exchange to the federal technology?

A: It was the board.⁶⁷

On February 25, 2016, Committee staff took the deposition of Patricia McCaig, a communications strategist who advised Governor Kitzhaber. She had this exchange with Committee staff:

Q: And to your knowledge, who had the decisionmaking authority to switch from the State exchange to the Federal technology?

A: The Cover Oregon board.⁶⁸

Evidence obtained by the Committee indicates that the Cover Oregon Board's unanimous decision to switch to the federal technology was based on the Workgroup's assessment of the cost, risk, and schedule of the State's available technology options. Ms. McCaig described the process in this exchange:

Q: And what was the decision based on, the decision to switch from the State exchange to the Federal Government technology by the Cover Oregon board? What was that based on again?

A: An independent review of cost and risk and schedule by people who were recruited by the Cover Oregon board and the Cover Oregon director who had IT background and experience.⁶⁹

Mr. Bonetto explained the Board's decision during his deposition:

⁶⁵ House Committee on Oversight and Government Reform, Deposition of Sean Kolmer, at 138 (Apr. 15, 2016).

⁶⁶ *Id.* at 52.

⁶⁷ House Committee on Oversight and Government Reform, Deposition of Bruce Goldberg, at 143 (Apr. 6, 2016).

⁶⁸ House Committee on Oversight and Government Reform, Deposition of Patricia McCaig, at 130 (Feb. 25, 2016).

⁶⁹ *Id.* at 158 (Feb. 25, 2016).

There were three things, and this was really the directive of the IT committee, which Alex Pettit led, and that was the risk, the schedule, and the cost of how we were going to move forward. So the risk was, what's the probability of success? The schedule, would you be able to continue to enroll people and, more importantly, be ready for November open enrollment date? And then the cost, were you actually going to be able to stay within budget. So those were the three big variables that were really front and center.⁷⁰

Mr. Bonetto also had the following exchange with Committee staff:

Q: And what was the workgroup's recommendation?

A: That based on the information they had reviewed from Deloitte looking at the risk, schedule, and cost of all of those options, that their recommendation was to move to the Federal Web site.⁷¹

Mr. Pettit explained to Committee staff that he presented the Workgroup's findings to the Cover Oregon Board:

Q: So the board—I just want to ask you a couple of questions to understand how the board came to their decision to switch to the federal technology. Did the board hear multiple presentations from the workgroup about the different technology options?

A: They had at least the presentation—so the direct action answer is yes.

Q: Was the board able to ask additional questions or any for any briefings if they had any questions?

A: Yes, ma'am, they were.

Q: The board heard the final recommendation from the Technology Options Workgroup. Correct?

A: Yes, ma'am, they did. They heard it from me as the representative of the Technology Options Workgroup.⁷²

⁷⁰ House Committee on Oversight and Government Reform, Deposition of Michael Bonetto, at 16 (Feb. 10, 2016).

⁷¹ *Id.* at 48.

⁷² House Committee on Oversight and Government Reform, Transcribed Interview of Alex Pettit, at 234-235 (Apr. 13, 2016).

Mr. Pettit also had this exchange during his transcribed interview:

Q: And you believed that the decision or the recommendation, the final recommendation, by the board was a well-thought-out decision and fact-based decision?

A: I did. I felt that it was well thought out. I also—I believed then as I believe now that there was simply no other alternative for us.⁷³

The Republican staff report argues that the Governor’s campaign advisers “staged the decision to create the appearance that it was the Board’s decision to move to HealthCare.gov” and “manipulated” the process.⁷⁴ The report also claims that “the Governor’s team, especially his campaign advisers, may have favored the move to the federal exchange because it put the Governor in a stronger position politically.”⁷⁵

The evidence obtained by the Committee indicates that the decision to switch to the federal technology was seen as the only way to ensure that Oregonians could enroll in healthcare plans given the failure of the Oracle system. During his deposition, Mr. Kolmer had this exchange with Committee staff:

Q: So in your view, was the board’s decision to switch back to the federal technology politically motivated?

A: No.

Q: Why do you believe the board decided to switch back to the federal technology?

A: It was the only option that we had, that they had, to ensure they could enroll people and coverage with a publicly facing website. The federal exchange worked. We knew it worked. The system that Oracle built for Cover Oregon didn’t work, and it was going to be too costly and too long of a time period to try to fix it based on the technical expertise.⁷⁶

During this exchange with Committee staff, Mr. Kolmer explained that the decision to switch to the federal technology was made to ensure access to coverage:

Q: In your view, would it have been politically favorable for the website to go live as planned on October 1st?

⁷³ *Id.* at 263-264.

⁷⁴ House Committee on Oversight and Government Reform, Majority Staff, *Cover Oregon: How Mismanagement and Political Interference Squandered \$305 Million Taxpayer Dollars*, at 12 (May 25, 2016).

⁷⁵ *Id.* at 132.

⁷⁶ House Committee on Oversight and Government Reform, Deposition of Sean Kolmer, at 139 (Apr. 15, 2016).

A: Would it have been politically favorable? Absolutely.

Q: Would it have been politically favorable for the general public to have been able to enroll in insurance on October 1st?

A: Yes.

Q: Did the governor receive criticism or negative media attention from the fact that the website failed to go live on October 1st?

A: Yes, quite a bit.

Q: And did the governor receive criticism, negative attention for the fact that the general public was unable to enroll in insurance at that time?

A: Yes.

Q: Was it politically favorable to have sustained media attention on the decision to switch to the federal technology?

A: I don't think so. I think it was a policy decision. We wanted to make sure people got coverage. At that point, we weren't worried about whether it was politically motivated or not.⁷⁷

Mr. Bonetto also reported that the decision was not made for political gain: "The Governor, the last thing that he wanted to do was to make this transition. He was very committed to making this work."⁷⁸

Ms. McCaig had this exchange with Committee staff:

Q: Ms. McCaig, in your opinion, was the decision to switch from the State exchange to the Federal technology politically motivated?

A: No.

Q: Okay. And what was it based on?

A: Facts and information and technical evaluation about the cost and the schedule and the risk. All of those things were the criteria which the decision was made on, and ensuring that we had a working Web site, we—ensuring that there was a working Web site by November of 2014.⁷⁹

⁷⁷ *Id.* at 137-138.

⁷⁸ House Committee on Oversight and Government Reform, Deposition of Michael Bonetto, at 18 (Feb. 10, 2016).

⁷⁹ House Committee on Oversight and Government Reform, Deposition of Patricia McCaig, at 153 (Feb. 25, 2016).

Ms. McCaig also stated:

It is just so unfathomable to me that anybody would believe that it would be in our best interest to not have a working Web site. It just begs the question of logic: How could that possibly be? This was important to the Governor. It was important to the taxpayers. It was important to the Federal Government. It was in everyone's best interest universally, except for one entity, that we move forward with a working Web site for Oregonians.⁸⁰

She also stated:

So just because two things happened to be linked or real doesn't mean one causes the other. So it was a political environment. Nobody would tell you that it was not a political environment. But because it was a political environment does not mean that the decisions that were made by the Cover Oregon board were politically driven or were influenced by politics.⁸¹

The Republican staff report argues that the "transfer of control from the Board of Directors to Kitzhaber, his staff, and his campaign advisers was inconsistent with the intent of Oregon law."⁸²

However, every witness who appeared before the Committee denied any improper influence by the Governor's advisers on the Workgroup's recommendation or the Cover Oregon Board's decision to switch to the federal technology.

For example, the Republican staff report suggests that Mr. Bonetto's November 2014 comments that the Governor's "leadership around Cover Oregon resulted in a less risky and less expensive move to the federal exchange" implies undue influence on the Cover Oregon Board by former Governor Kitzhaber and his staff.⁸³

To the contrary, these words reflect that the Board's decision to switch to the federal technology presented the lowest risk and the lowest cost on the best schedule among the State's final technology alternatives.

Mr. Bonetto had this exchange with Committee staff:

Q: Do you have any reason to believe that the board was coerced into voting to switch from the State exchange to the Federal—

⁸⁰ *Id.* at 151.

⁸¹ *Id.* at 213.

⁸² House Committee on Oversight and Government Reform, Majority Staff, *Cover Oregon: How Mismanagement and Political Interference Squandered \$305 Million Taxpayer Dollars*, at 58 (May 25, 2016).

⁸³ *Id.* at 132.

A: No.⁸⁴

Ms. McCaig concurred in this exchange with Committee staff:

Q: Did you ever instruct the technology work group to disregard the other technology alternatives that were being considered before the work group?

A: No.

Q: Did you give any instructions at all to the technology options work group?

A: I never met with, never was part of, the work group. No.

Q: And, to your knowledge, did any of the Governor's other advisers instruct the tech work group to disregard the other technology?

A: Not to my knowledge. No.

Q: To your knowledge, did the Governor or his staff instruct the work group to disregard the other technology alternatives?

A: No.

Q: And did you ever instruct the technology work group to make the recommendation to switch from the State exchange to the Federal technology?

A: No.

Q: And, to your knowledge, did any of the Governor's other advisers ever instruct the technology work group to make the recommendation to switch from the State exchange to the Federal technology?

A: No.

Q: To your knowledge, did the Governor or his staff ever instruct the technology work group to make the recommendation to switch from the State exchange to the Federal technology?

A: No.

Q: And, to your knowledge, was the recommendation to switch to the Federal technology a unanimous decision by the work group?

A: Yes.⁸⁵

⁸⁴ House Committee on Oversight and Government Reform, Deposition of Michael Bonetto, at 51 (Feb. 10, 2016).

Ms. McCaig also had this exchange with Committee staff:

Q: And if I understand your testimony here today, you did not participate in that decision. Correct?

A: I did not participate in that decision. The Cover Oregon board independently makes those decisions.⁸⁶

Dr. Goldberg concurred in this exchange with Committee staff:

Q: Did Patricia McCaig pressure or coerce you at all regarding any Cover Oregon decisions?

A: No. I never felt coerced.

Q: Did Ms. McCaig direct you to make any substantive decisions regarding the Cover Oregon switch or the Cover Oregon Board?

A: No.

Q: Did Ms. McCaig direct or instruct you to switch from the state exchange to the federal technology?

A: No.

Q: Are you aware of Patricia McCaig coercing or pressuring anyone else regarding Cover Oregon?

A: I'm not aware.⁸⁷

Mr. Pettit had this exchange during his interview:

Q: So at any during these conversations with Patricia McCaig or Patti Wentz, did you ever feel coerced or forced into make any policy decisions?

A: No, ma'am, I did not.

Q: Were they directing any policy or providing any substantive policy recommendations to you?

⁸⁵ House Committee on Oversight and Government Reform, Deposition of Patricia McCaig, at 78-79 (Feb. 25, 2016).

⁸⁶ *Id.* at 153.

⁸⁷ House Committee on Oversight and Government Reform, Deposition of Bruce Goldberg, at 168-169 (Apr. 6, 2016).

A: To me, no, ma'am.⁸⁸

Mr. Kolmer had this exchange during his deposition:

Q: Was it your understanding that the governor would communicate with board members in order to influence their decisions about Cover Oregon or other matters or direct them to make a certain decision?

A: He would never direct them. When I would have conversations with them on his behalf, I would make it clear our preferences, but it was their ultimate authority to make a decision.⁸⁹

Mr. Kolmer also had this exchange with Committee staff:

Q: Were you in any way trying to direct or determine any decisions made by the board?

A: No.

Q: Were you aware of anyone else attempting to direct or determine any decisions being made by the board at this time?

A: No.⁹⁰

B. Evidence Does Not Support Allegations Against McCaig

The Republican staff report suggests that Ms. McCaig concealed her role with the campaign: “McCaig recommended that she staff Bonetto on February 8, 2014. McCaig did not, however, disclose her work for Kitzhaber’s campaign until September 2014.”

Ms. McCaig explained to the Committee that she was not paid by the campaign until more than four months after the Cover Oregon Board made the unanimous decision to switch to the federal technology:

During this time, February to September 2014, I did not seek or receive payment for any professional services, public or private. I did not have any clients, contracts, or income from any work. Between March and August, if asked and if available, I volunteered advice and other counsel on many different topics to many different people, including

⁸⁸ House Committee on Oversight and Government Reform, Transcribed Interview of Alex Pettit, at 230 (Apr. 13, 2016).

⁸⁹ House Committee on Oversight and Government Reform, Deposition of Sean Kolmer, at 165-166 (Apr. 15, 2016).

⁹⁰ *Id.* at 200.

business and civic leaders, campaigns, elected officials, government entities and others. I performed all of this work strictly as a volunteer.⁹¹

Ms. McCaig described her role as an unpaid adviser:

The primary role was in response to the Governor's request for additional communications capacity in the Governor's office. And I think, as you well know, he was facing quite a combustible moment with Cover Oregon. The Web site had failed to go online. There was a lot of media and public interest. It was very intense. He had undergone in November and December some staff transitions not related to Cover Oregon. But he had a new communications director and he had a chief of staff who was new to that position. And as a result of some encounters through January, he found himself, uniquely for him, unprepared in a public setting, both in anticipating some questions, and responding to them, related to Cover Oregon, and convened a group of people to ask their advice on how and what needed to be done to improve his communications capacity in the office. And that was how I initially got involved.⁹²

The Republican staff report also claims that "campaign consultant McCaig was involved in conversations about analyzing the potential technology options" in a manner that went beyond "communications work."⁹³

Ms. McCaig testified, however, that she was not involved in developing or directing policy relating to Cover Oregon:

I compiled information for him and reported to him based on the information that I compiled. I didn't create anything. I wasn't out there developing policy, directing anything. I was assessing and ensuring that in realtime he was getting the kinds of pieces of information he needed to be informed, and to make the decisions, and take the positions that he needed to take. I was just a conduit with that, but that was in fact the role I was playing. While other people were trying to solve the problem, I was trying to get him the information about how things were developing.⁹⁴

In a letter to the Committee, Ms. McCaig elaborated on her role with the Governor:

At his request, I helped to develop his timelines relevant to breaking issues with Cover Oregon, reviewed drafts of documents for public dissemination, reviewed his media

⁹¹ Letter from Patricia McCaig to House Committee on Oversight and Government Reform (June 5, 2015).

⁹² House Committee on Oversight and Government Reform, Deposition of Patricia McCaig, at 15 (Feb. 25, 2016).

⁹³ House Committee on Oversight and Government Reform, Majority Staff, *Cover Oregon: How Mismanagement and Political Interference Squandered \$305 Million Taxpayer Dollars*, at 122 (May 25, 2016).

⁹⁴ House Committee on Oversight and Government Reform, Deposition of Patricia McCaig, at 69 (Feb. 25, 2016).

coverage on the Cover Oregon crisis, worked through the Governor's office to gather current information from the experts about upcoming issues with Cover Oregon, offered advice on the Governor's response, and helped the Governor prepare his response (timing, content, venue) on those issues.⁹⁵

Ms. McCaig explained in her testimony that she was consulted based on her communications experience and did not believe it was improper for the Governor or his staff to consult with advisers. She had this exchange with Committee staff:

Q: So when asked in his deposition whether there was anything unusual or improper about you speaking to him or Governor Kitzhaber, Mr. Bonetto said emphatically no. Would you agree?

A: I would agree that there was nothing untoward or improper.

Q: And why was it necessary to communicate regularly with Governor Kitzhaber's staff on breaking issues like Cover Oregon?

A: Again, it was the confidence that the Governor had in me to provide him the information that he needed to stay abreast, plugged in, and present on the issues related to Cover Oregon and the rest of his team, the communications office in the Governor's office, the staff, they were dealing with the real problem. They were actually the people who were trying to figure out what to do. And to the extent that Mike could communicate with me and provide just sort of the reporting on what was going on, I could package that and get it to the Governor in an effective way that satisfied Mike, the Governor, and everybody else who was involved.

Q: Okay. And to your knowledge, did Governor Kitzhaber or his staff consult with other outside advisers about high profile or breaking issues?

A: Yes.

Q: To your knowledge, did Governor Kitzhaber or his staff consult with other outside advisers about Cover Oregon?

A: Yes.

Q: And based upon your experiences as a communication strategy expert, is it unusual for an adviser to receive realtime updates on high-profile breaking issues?

A: No. And when a Governor requests it and requires it, somebody needs to deliver it.

⁹⁵ Letter from Patricia McCaig to House Committee on Oversight and Government Reform (June 5, 2015).

Q: Are you aware of any laws that specifically prohibit communications between expert advisers and State employees or government officials?

A: No.

Q: And in your opinion, was your communication with Governor Kitzhaber's office unusual or improper?

A: No.⁹⁶

Mr. Kolmer explained that Ms. McCaig held herself out as a communications expert:

Q: Did you ever communicate with Ms. McCaig about issues related to Cover Oregon?

A: Yes.

Q: And is it fair to say that you would seek her advice because of her expertise in communications and not because of her role as a health policy expert or IT expert?

A: Correct.

Q: Did Ms. McCaig hold herself out as a health policy expert?

A: No.

Q: Did she hold herself out as an IT expert?

A: No.⁹⁷

Mr. Pettit had a similar exchange with Committee staff:

Q: And, to your knowledge, Patricia McCaig is not a technology or IT expert. Correct?

A: Not to my knowledge, no, ma'am.

Q: And was she a member of the Technology Options Workgroup?

A: She was not, ma'am.

⁹⁶ House Committee on Oversight and Government Reform, Deposition of Patricia McCaig, at 69-71 (Feb. 25, 2016).

⁹⁷ House Committee on Oversight and Government Reform, Deposition of Sean Kolmer, at 176-177 (Apr. 15, 2016).

Q: And she wasn't even one of the voting members of the Technology Options Workgroup which consisted of IT experts. Correct?

A: Yes, ma'am. She was not.⁹⁸

On April 9, 2014, approximately two weeks prior to the Cover Oregon Board decision, Ms. McCaig wrote an e-mail to the Governor with information regarding alternatives for the State's health insurance exchange platform. According to this e-mail, these were her "notes from the last 2 or 3 days consolidated."⁹⁹

Ms. McCaig wrote: "At the IT meeting on the April 21st it is likely the IT committee will recommend moving to the federal exchange."¹⁰⁰

During her deposition, Ms. McCaig explained the context of this e-mail:

It's predictive. It's my trying to explain what we think is likely about what is going to happen in the meeting. I can't make it so. I'm not trying to make it so. It's what people have reported as the basis for their work.¹⁰¹

Ms. McCaig also had this exchange with Committee staff:

A: This was an email that was summarizing a series of conversations that had occurred in the preceding days and was designed to provide him the most recent, up-to-date, information prior to a public meeting the next day where all of this was going to occur, both some of the content issues, as well as, a discussion of the potential calendar.

Q: And who is "him" that you're referring to?

A: Governor Kitzhaber.

Q: Okay. And conversations with who?

A: Mike Bonetto, Bruce Goldberg, and I assume Sean Kolmer. I don't remember who else was on those calls.

Q: And so you received this information from those three individuals?

⁹⁸ House Committee on Oversight and Government Reform, Transcribed Interview of Alex Pettit, at 231 (Apr. 13, 2016).

⁹⁹ House Committee on Oversight and Government Reform, Deposition of Patricia McCaig, at 117 (Feb. 25, 2016).

¹⁰⁰ E-mail from Patricia McCaig to John Kitzhaber, Governor of Oregon (Apr. 9, 2014).

¹⁰¹ House Committee on Oversight and Government Reform, Deposition of Patricia McCaig, at 119 (Feb. 25, 2016).

A: Yes.

Q: Okay. And there was a question about the last—number 8, the regardless statement. I'll read it. Quote, "Regardless, the Cover Oregon board would hear and accept the Federal exchange recommendation April 22, 23, or 24," end quote. When you wrote this line, did you know that the Cover Oregon board would accept the exchange and vote on it on one of these dates?

A: I knew that the presentation that was going to be made the next day, about the calendar, would include that the board should be meeting on the 22, 23, or 24. And given the topic that—and the process that had been outlined, that it was likely that moving to the Federal exchange would be the recommendation. But the important part about it was that a decision, whether it was to go or not go with the Federal exchange, needed to be made on one of those days in order to keep moving forward to meet the November 14 deadline for enrollment.

Q: And you say likely, is that just predicting based on your conversations with other individuals like Mike Bonetto and Sean Kolmer?

A: This was a recap, a summary, of their work to date, not my judgment. If it's helpful, I don't know whether to interject this or not, but there were media accounts, I believe on April 1, on, potentially April 3, which were predicting that it was likely that Oregon was going to go—I mean it was not a secret that this was a topic that was being reviewed, revealed, dissected, and put back together. I mean, this was clearly a topic of discussion for the community of interest on this.

Q: Okay. But when you wrote "regardless the Cover Oregon board would hear and accept the Federal exchange recommendation April 22, 23, or 24, you did not know that they would accept the recommendation?"

A: I didn't know. And I can tell you that they ended up not meeting on April 22, 23, or 24. I didn't know that either. Right. This was to the best of my ability at that time, given the information that had provided predictive about what the discussion was going to be the next day, and the likelihood of possible outcomes and the calendar. And they ended up meeting on a slightly different day, and they did end up going ahead and unanimously supporting the move to the Federal exchange. But something could have gone—they could have gotten additional information from their IT folks and concluded that wasn't the way to go.¹⁰²

The evidence obtained by the Committee is consistent with the findings of Oregon's Multnomah Circuit Court. On July 27, 2015, the court dismissed Oracle's claims that Ms. McCaig and other advisers induced the Cover Oregon Board to transition to the federal technology:

¹⁰² *Id.* at 144-46.

There is simply not sufficient evidence, linking the decision by Cover Oregon to choose the much less expensive federal exchange over continuing a business relationship with plaintiff and any efforts of interference by defendants, to support a probability that plaintiff can establish causation.

...

Additionally, the cost of continuing with plaintiff was several times higher than the cost of transitioning to the federal exchange. None of these facts were the manufacture of defendants or occurred as the result of action by the defendants.

...

There is no evidence of any interfering actions taken by defendants Weiner, Looper, or Nelson. Defendant Raphael allegedly (but merely) led meetings. Defendant McCaig has the most specific evidence presented against her of all the defendants, but it is not sufficient to support plaintiff's allegations. Plaintiff has not shown the abrupt change of the Cover Oregon leadership from a commitment to continuing a relationship with plaintiff to a termination of that relationship in favor of using the federal exchange.¹⁰³

C. Use of Personal E-mail Not Improper

The Republican staff report argues that the “use of personal email accounts for official government business is at odds with Oregon’s public records law, which favors disclosure and public transparency.”¹⁰⁴

However, Oregon state law did not prohibit the use of personal e-mail accounts, nor did the Committee’s investigation uncover any evidence that the Governor’s advisers or Cover Oregon staff used personal e-mail in an attempt to communicate surreptitiously or hide information from Congress.

At the time, there were no state laws or policies against the use of personal e-mail to conduct official business. When asked by Committee staff about his use of personal e-mail, Mr. Bonetto testified:

[S]ince there were individuals who had associations with the campaign as well as kind of in a noncampaign role in helping as unpaid advisers, I think really being as conservative as possible, we wanted to keep that information flow on private email, I would say, with full disclosure, knowing full well that if there was any communication that was deemed

¹⁰³ Opinion and Order for Intentional Interference with Economic Relations, at 20 (July 27, 2015), *Oracle America, Inc. v. Kevin Looper, Patricia McCaig, Scott Nelson, Tim Raphael, and Mark Weiner* (No. 15 CV 04705).

¹⁰⁴ House Committee on Oversight and Government Reform, Majority Staff, *Cover Oregon: How Mismanagement and Political Interference Squandered \$305 Million Taxpayer Dollars*, at 202 (May 25, 2016).

to be public, that it would be released. And as I'm reading it today, it's been released. These are all public documents.¹⁰⁵

Mr. Bonetto also had this exchange with Committee staff:

Q: Are you aware of any laws that prohibit State employees from using personal email to conduct any official business?

A: No.

Q: Okay. And your testimony is that you were aware that the emails that you were sending from your personal emails could be made public. Is that correct?

A: Yes.

Q: And you also testified that you made a point to keep a record of any emails that were sent from your personal account.

A: Correct.

Q: Okay. And you did that knowing that they could be one day made public, correct?

A: Correct.

Q: And you also voluntarily produced those emails to this committee, correct?

A: Correct.

Q: Okay. And did you use your personal email to have secret conversations or to hide any of the conversations that you were having on your personal email account?

A: No.¹⁰⁶

Mr. Kolmer provided similar testimony:

It was an expectation of mine that they would be preserved and that I would preserve them, and anything I talked about work related on any medium or any device is public record and available to the public.¹⁰⁷

¹⁰⁵ House Committee on Oversight and Government Reform, Deposition of Michael Bonetto, at 36 (Feb. 10, 2016).

¹⁰⁶ *Id.* at 196-197.

¹⁰⁷ House Committee on Oversight and Government Reform, Deposition of Sean Kolmer, at 143 (Apr. 15, 2016).

Mr. Kolmer also had this exchange during his deposition, explaining that all of his personal e-mails regarding official business were preserved and produced to the Committee:

Q: Is it your understanding that your personal emails or the emails that you wrote on your personal account have now been made public as part of this investigation and other investigations?

A: Yes.

Q: Did you send emails through your personal account to the hide them from the public or make them secret?

A: No.

Q: Have you purposely deleted any official emails from your personal email account?

A: Not that I'm aware of.

Q: At the time you were sending these emails, were you aware of any laws that prohibited Oregon state employees from using their personal email accounts?

A: Not that I'm aware of.

Q: Were you aware of any policies or procedures in the governor's office that would have prohibited you from using your personal email account?

A: Not that I'm aware of.¹⁰⁸

Ms. McCaig also had an exchange with Committee staff regarding personal e-mail use during her deposition:

Q: Are you aware of any law that prohibited Oregon State employees from using personal email for work purposes?

A: No. I'm not aware of any law which prohibited them from using personal emails for State purposes.¹⁰⁹

In fact, many governors and their advisers have used personal e-mail to conduct official business in the absence of any law or policy prohibiting the practice.

For example, Governor Sam Brownback (R-KS) used his personal e-mail to discuss official business with his staff, and his staff used personal e-mail to discuss official business

¹⁰⁸ *Id.* at 143-144.

¹⁰⁹ House Committee on Oversight and Government Reform, Deposition of Patricia McCaig, at 134 (Feb. 25, 2016).

amongst themselves. Governor Brownback's budget director "used a private e-mail address to send a draft of the state budget several weeks before it was released to lawmakers."¹¹⁰

Governor Chris Christie (R-NJ) has taken the position that New Jersey law does not require official business to be conducted via state or official e-mail:

When I'm president of the United States, you'll have a right to know what your president is doing, and we have the obligation to be held accountable for what we're doing," he declared. Yet, back in New Jersey, the Republican governor's administration is asserting executive privilege to block the release of any emails he may have sent to state officials from two private email accounts.¹¹¹

Former Governor Rick Perry (R-TX) used personal e-mail to communicate with members of the Board of Regents at the University of Texas. He also used his personal e-mail to communicate with "a prominent Republican donor and informal adviser."¹¹²

Governor Bobby Jindal (R-LA) and his staff used personal e-mail to develop communications strategies on various topics, including controversial healthcare decisions. According to one press report: "Top officials in Louisiana Gov. Bobby Jindal's administration used personal e-mail accounts to craft a media strategy for imposing hundreds of millions of dollars in Medicaid cuts."¹¹³

Former Governor Mitt Romney (R-MA) reportedly used his personal e-mail to conduct official business while in office: "While governor in Massachusetts, Romney used two private e-mail addresses to communicate with aides, develop policy and political strategy and edit op-ed articles and press releases."¹¹⁴

Former Governor Jeb Bush (R-FL) used his personal e-mail to conduct high-level and high-profile official business. According to one press report: "As governor, Bush used his account, jeb@jeb.org, to conduct official, political and personal business, including plans to woo

¹¹⁰ *Gov. Sam Brownback Also Used Private E-Mail Address to Communicate with Staff*, Wichita Eagle (May 16, 2015) (online at www.kansas.com/news/politics-government/article21179304.html).

¹¹¹ *Chris Christie Had Two Private Email Accounts; NJ Governor Blocks Release of Any Messages He May Have Sent to Government Officials*, International Business Times (Oct. 4, 2015) (online at www.ibtimes.com/political-capital/chris-christie-had-two-private-email-accounts-nj-governor-blocks-release-any).

¹¹² *Et Tu Rick? Perry Has Own Private Email Trail*, Texas Tribune (Mar. 4, 2015) (online at www.texastribune.org/2015/03/04/perry-faces-transparency-questions-after-clinton-r/).

¹¹³ *Bobby Jindal Aides Use Personal Email to Strategize on Medicaid Cuts*, Associated Press (Dec. 10, 2012) (online at www.politico.com/story/2012/12/top-jindal-aides-use-personal-email-to-strategize-084837).

¹¹⁴ *Bobby Jindal Aides Use Personal Email to Strategize on Medicaid Cuts*, Associated Press (Dec. 10, 2012) (online at www.politico.com/story/2012/12/top-jindal-aides-use-personal-email-to-strategize-084837).

new businesses to the state, judicial appointments and military matters, the e-mail records show.”¹¹⁵

¹¹⁵ *As Governor, Jeb Bush Used E-Mail to Discuss Security, Troop Deployments*, Washington Post (Mar. 14, 2015) (online at www.washingtonpost.com/politics/as-governor-jeb-bush-used-e-mail-to-discuss-security-troop-movements/2015/03/14/0d7fae16-ca49-11e4-b2a1-bed1aeea2816_story.html).