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 am 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

most transparent administration in history, but federal agencies are often black holes in terms of disclosure. I've previously testified about this president's remarkable assertions of secrecy over White House visitor logs, Fannie Mae and Freddie Mac documents, and even the photos of the dead Osama bin Laden. (The administration asserted secrecy over the photos so as to not upset al Qaeda!)

We have filed nearly 3,000 FOIA requests with the Obama administration, and our staff attorneys have been forced to file nearly 225 FOIA lawsuits in federal court against this administration. Most of these lawsuits are filed just to get a "yes or no" answer from the administration. Administratively, agencies have built additional hurdles and stonewalled even the most basic FOIA requests. The Obama administration's casual law-breaking when it comes to FOIA is a national disgrace and shows contempt for the American people's right to know what their government is doing.

Both the left and right agree that, on major transparency issues, the Obama administration has come down on the side of secrecy.

The Founding Fathers took transparency seriously.

James Madison wrote, "A popular government without popular information, or the means of acquiring it, is but a prologue to a Farce or a Tragedy, or perhaps both." Unfortunately, DC is both a tragedy and a farce today – but as Thomas Jefferson said, "If we are to guard against ignorance and remain free, it is the responsibility of every American to be informed."

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

unless you're willing to make a federal court case out of an issue, that isn't democracy, and it isn't self-government.

But there is a way forward out of the DC transparency and corruption crisis. Judicial Watch shows that one citizen group, using the Freedom of Information Act and independent oversight, can help the American people bring their government back down to earth and under control.

Judicial Watch has succeeded in uncovering documents that had been denied to Congress.

On Benghazi, it has been a little over a year since Judicial Watch uncovered a newly declassified email showing then-White House Deputy Strategic Communications Adviser Ben Rhodes and other Obama administration public relations officials, not "intelligence officials," putting out the lie that the Benghazi attack was "rooted in an Internet video, and not a failure of policy." These documents had been withheld from Congress and a half-dozen or so congressional committees had been made to look foolish. As a direct result of this disclosure, Speaker Boehner reversed his opposition to a Select Committee on Benghazi.

The Select Committee, now run by Rep. Trey Gowdy (S-SC), doesn't seem to be succeeding, to put it charitably, in getting answers or accountability. And Judicial Watch continues to be go-to source on Benghazi facts as we continue to uncover revelation after revelation about the Benghazi terrorist attack. These revelations have not come easy and have only occurred through multiple federal lawsuits and court orders requiring the administration to comply with FOIA. Our document disclosures have led to questions about criminal violations of

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

administration that Hillary Clinton's and any other secret accounts used by State employees should be secured, recovered and searched. Judicial Watch's litigation against the State Department has already exposed key documents about both the Benghazi (as discussed above) and Clinton cash scandals.

Indeed, as with Lois Lerner's emails, our litigation forced the State Department to publicly disclose Hillary Clinton's secret email accounts. In a recent federal court filing we point out:

> On November 12, 2014, the State Department released its production of responsive, non-exempt, records that Judicial Watch understood to be complete. In its letter, the Department stated that it located four (4) documents as a result of its search of the Office of the Secretary…On December 5, 2014, the State Department produced its draft *Vaughn* index pursuant to the Court's September 15, 2014 Order…In both instances, the State Department omitted that its search did not include Secretary Clinton's emails in the Office of the Secretary. More egregiously, the State Department omitted that Secretary Clinton had apparently just turned over 55,000 pages of her agency emails that had not been searched or included in the Department's draft *Vaughn* index …These omissions are material and were apparently made in the process of settlement discussions to induce dismissal.
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> A supplemental search and document production is due April 2, 2015 solely because Judicial Watch requested search affidavits, surprised that that the State Department located only four responsive records – none of which are Secretary Clinton's emails and all of which were

> 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.

This is the basis for a new federal lawsuit, filed last week, against Secretary of State John Kerry. Kerry's predecessor at the State Department, former-Secretary Clinton, conducted official government business using a secret, unsecured email server and email accounts. Her top aides and advisors also used non-"state.gov" email accounts to conduct official business.

In 2014, Clinton "unilaterally determined which of her emails were official government records and, in December 2014, returned at least a portion of these public records – as many as 55,000 pages of records – to the State Department."

In the lawsuit, Judicial Watch argues the following:

> The Clinton emails are agency records subject to the [Federal Records Act (FRA)] and the State Department's failure to retain, manage, and search these agency records has compromised the Department's retention of records that concern or relate to Secretary Clinton and other high level State Department officials who used non-"state.gov" email addresses.

The Federal Records Act stipulates:

> Agencies may only dispose of records on terms approved by the Archivist of the United States, who is head of the National Archives and Records Administration ("NARA"). ... This process is the exclusive procedure by which all federal records may be disposed of or destroyed. ...

The FRA imposes a direct responsibility on an agency head to take steps to recover any records unlawfully removed.

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.

The easy answer is that FOIA is a straightforward tool that quickly gives JW, other media, and citizens access to the federal courts in order to ensure compliance with lawful records requests.

Congressional investigations, even with subpoenas, are political by nature and require, under the current practice, effective enforcement in court with the cooperation of a politicized Justice Department.

The Fast and Furious scandal is a perfect example. Eric Holder was charged with contempt of Congress, and President Obama made a remarkable assertion of executive privilege to protect his attorney general and thwart Congress. Rather than enforce the contempt charge, the Justice Department ignored it. Only after Judicial Watch secured key court victories separately against the Justice Department did Congress, after two years of getting nowhere, get many of the documents it had been seeking.

Of course, if the administration were transparent – all of this wouldn't matter. Truth fears no inquiry. Crafty, corrupt politicians realize that transparency and accountability go hand-in-hand. If the Obama administration truly had nothing to hide, it would not go to such extraordinary lengths to keep information from the public.

A commitment to transparency must cut across partisan lines.

We are please to see renewed congressional interest in reforming FOIA. We only ask that such reforms be significant and provide more access to information to the American

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.

BIOGRAPHY OF THOMAS FITTON
PRESIDENT OF JUDICIAL WATCH, INC.

Tom Fitton is the President of Judicial Watch, the public interest group that investigates and prosecutes government corruption.

As president of Judicial Watch since 1998—and with nearly 25 years' experience in conservative public policy—Fitton has helped turn Judicial Watch into America's largest and most effective government watchdog organization.

He has testified before Congress and is an internationally recognized expert on government corruption and operations, election integrity, immigration enforcement, and open government. Under his leadership, Judicial Watch was named one of Washington's top 10 most effective government watchdog organizations by *The Hill* newspaper.

Fitton is the author of the *New York Times* best-seller *The Corruption Chronicles* and executive producer of the documentary movie *District of Corruption*.

He is a regular columnist for *Breitbart.com* and *Newsmax*. His opinion pieces have been published in *FoxNews.com*, and *The Washington Times*.. He has appeared widely in national and international media.

In 2015, the American Conservative Union (ACU) awarded Judicial Watch President Fitton with the Defender of the Constitution Award during its annual Conservative Political Action Conference (CPAC).

Fitton obtained his BA from The George Washington University and resides in the Washington, DC area with his family.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: Thomas Fitton, President, Judicial Watch, Inc.

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2012. Include the source and amount of each grant or contract.

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2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Judicial Watch is a non-profit educational foundation. I am president of JW and a member of its board of directors.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2012, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

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I certify that the above information is true and correct.
Signature: [signature] Date: 5/27/15