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# Congress of the United States

## House of Representatives

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### Opening Statement of Rep. Henry A. Waxman Committee on Oversight and Government Reform Hearing on Electronic Records Preservation at the White House February 26, 2008

Good morning. Today's hearing focuses on whether President Bush and the White House are complying with the Presidential Records Act.

The Presidential Records Act was enacted in 1978 to ensure that White House records are preserved for history and are owned by the American people. It requires the President to preserve the records that document the "activities, deliberations, decisions, and policies" of the White House.

The emergence and remarkable surge in popularity of e-mail has presented problems in complying with the Act. As members of this Committee know, President Clinton experienced these problems. In 1994, he established the Automated Records Management System to archive presidential records, including e-mails. But the system had technical flaws. For a period of time it would not preserve e-mails sent by officials whose name began with the letter "D."

In 2000, Dan Burton, who was then Chair of this Committee, alleged that the Clinton Administration deliberately lost and withheld e-mails from Congress. Mr. Burton held five hearings on that issue and forced the White House to spend over \$11 million to reconstruct 200,000 e-mails.

In the end, the overblown charges of wrongdoing were proven false. The lost e-mails turned out to be the result of a few technical glitches, not any intentional acts.

The silver lining to the Committee's investigation, though, was that the problems in the Automatic Records Management System were addressed. When President Clinton left office and President Bush came into office, the White House had in place a system for archiving White House e-mails that complied with the Presidential Records Act.

That's what makes the actions of the Bush Administration so inexplicable.

President Bush's White House kept the Automatic Records Management System in 2001. But in September 2002, for reasons that have never been adequately explained, the Bush White House decided to replace the Automatic Records Management System.

In its place, the White House adopted a system that one of its own experts described as "primitive" and carried a high risk that "data would be lost." The system also had serious security flaws. Until the problem was corrected in 2005, all officials in the White House had access to the archive system and the ability to delete or alter existing information.

The White House's own analysis of its system identified over 700 days in which e-mail records seem either impossibly low or completely nonexistent. This 2005 analysis was prepared by a team of 15 White House officials and contractors.

And these are not the only missing White House e-mails. We also know that over 80 White House officials — including some of the most senior officials in the White House — routinely used e-mail accounts at the Republican National Committee (RNC). The RNC didn't preserve e-mails for over 50 of these officials and has few e-mails for any White House officials prior to 2006.

The result is a potentially enormous gap in the historical record. Karl Rove, the President's closest political advisor, was a prolific user of his RNC e-mail account. Yet the RNC preserved virtually none of his e-mails from before 2004. The result is that we may never know what he wrote about the build-up to the Iraq war.

In recent weeks, the White House has launched an all-out attack on its own analysis of the missing e-mails. One White House spokesman tried to claim there were no missing e-mails after all. Another senior White House official said she had "serious reservations" about the accuracy of the White House's previous work and that she had "so far been unable to replicate its results or to affirm the correctness of the assumptions underlying it."

Many of us have grown used to the White House attacking any congressional or independent study that conflicts with President Bush's policies. This is the first time I can remember the White House using those same tactics on itself. It is remarkable.

But that's not all. The White House is also refusing to cooperate with the National Archives. For almost a year the nonpartisan National Archives has been urging the Bush White House to assess the problem of missing e-mails and to take "whatever action may be necessary to restore any missing emails."

The lack of cooperation became so severe that last May, the Archivist himself wrote to the White House Counsel, Fred Fielding, to urge "utmost dispatch" in addressing the missing e-mails.

Yet in September 2007, the Archive's General Counsel drafted a memo summarizing the White House's decision to ignore the request of the Archivist. He wrote:

we still have made almost zero progress in actually moving ahead with the important and necessary work that is required for a successful transition. ... [O]ur repeated requests ... have gone unheeded. ... Of most importance, we still know virtually nothing about the status of the alleged missing White House emails.

The Archives also asked the White House to start recovering official e-mails that the Republican National Committee deleted pursuant to its policy of regularly purging e-mails from its servers. These repeated requests have also been rebuffed. In fact, the RNC has informed our Committee that it has no intention of trying to restore the missing White House e-mails from backup tapes containing past RNC e-mail records.

My staff has prepared an extensive memorandum that summarizes what we have learned through our investigation into the missing White House e-mails. I ask that this memorandum and the documents it cites be made part of the hearing record.

I also urge members and the public to review this memorandum carefully. E-mail archiving by its nature is a complex and technical subject. The memorandum provides a guide to what we have learned from our interviews of White House officials and our review of over 20,000 pages of internal White House and Archives documents.

I am determined not to make the same mistakes some of my Republican colleagues made eight years ago. I don't want to jump to any conclusions or make sensational allegations of wrongdoing without any evidence.

At the same time, the White House's actions make absolutely no sense. There's an old saying — if it ain't broke, don't fix it — but that's exactly what the Bush White House did to the automated record system. It intentionally dismantled an effective system and replaced it with a primitive alternative that just didn't work.

It initiated its own study of missing e-mails in 2005 and now derisively attacks its own work as incompetent and grossly inaccurate.

It has continually resisted not just the efforts of this Committee, but also those of the National Archives, which has the responsibility to carry out the Presidential Records Act.

None of this makes any sense, which is why today's hearing is so important.

I look forward to hearing from our witnesses and to finally start making progress on this important open-government issue.