



**Comments to Unlawful
Chief FOIA Officers Meeting
November 17, 2021**

**Great Leadership Team
Great Meeting
I want NARA to succeed**

**PUBLIC COMMENT
June 15, 2022**

**by Robert Hammond
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**Copy to:
Senate Judiciary, House Oversight
Senator Patrick Leahy
Senator Charles Grassley
whistleblower@judiciary-rep.senate.gov**

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Outline

1. [Introduction](#)
2. [Absent Oversight & \\$\\$, FOIA Dies in Darkness & Neglect](#)
3. [Hammond Speaker Notes November 17, 2017, Oral Comments \(Great meeting, but unlawfully held\)](#)
4. [We The People. Declaration of Independence!](#)

Introduction

Greetings!

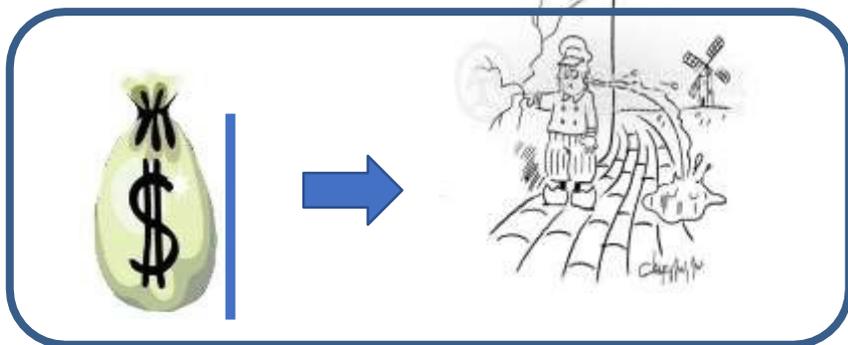
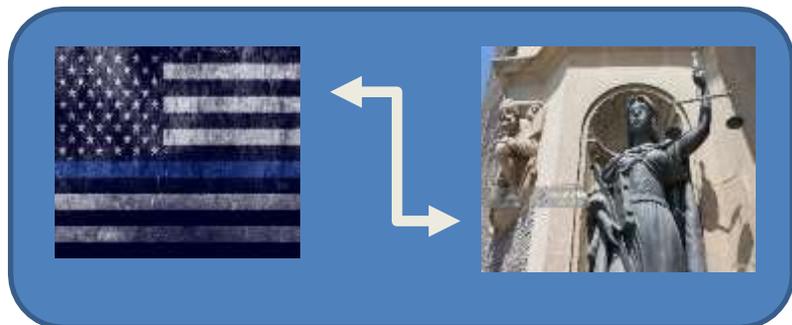
Attached are my speaker notes that I had planned to share as oral public comments at the November 17, 2021 Chief FOIA Officers Council, which are extremely complementary to NARA and DOJ leadership and touch on my efforts to obtain sufficient funding for NARA and DOJ OIP FOIA missions and other matters.

I am disappointed that in an annual meeting specifically mandated by statute for oral and written public comments (Public Law No: 114-185), NARA only allowed three minutes total for oral comments from members of the public (me). I presented the highlighted sections. (*See also* [Chief FOIA Officers Council Meeting Livestream - November 17, 2021 - YouTube](#) at approximately 2:08:03).

To fill the void after limiting my oral public comments with no others in the queue followed by silence, NARA permitted a government Chief FOIA Officer to speak. (There was a separate time slot for that however.) I agree with that Chief FOIA Officer, Jason, compliance audits are needed.

Thx. God bless.

Absent Oversight & \$\$, FOIA Dies in Darkness & Neglect



OGIS Budget. Not adjust for inflation or mandatory pay increases.	
	\$ in Thousands Requested
FY 2022	\$1,588 (Not funded.CR.)
FY 2021	\$1,289
FY 2020	\$1,212
FY 2019	\$1,317
FY 2018	\$1,012
FY 2017	\$1,114
FY 2016	\$1,094
FY 2015	\$913
FY 2014	\$1,074
FY 2013	\$1,629
FY 2012	\$1,529

- For OGIS, the situation is worse than dire. OGIS had **\$1.629M In 2013** with a mediation caseload of 300 –400 cases per year. That grew to over **4,600 cases in 2019** with only **\$1.2M by 2020**, despite inflation and mandatory pay raises. All the while, **NARA** got every dime that they asked for in 2019: **\$377.8M**.
- DOJ OIP similarly states a “lack of resources.”

Speaker Notes November 17, 2017 Oral Comments

Good morning. This is Robert Hammond, Bob Hammond.

I am coming to you today from the ancestral lands of proud, unified, inclusive American citizens. **We The People of the United States of America.**

INTRODUCTION. GREAT LEADERSHIP

First, I would like to say this Council is co-chaired by two incredibly talented people with equally impressive leadership.

- Alina Semo: Georgetown University Law Center, Phi Beta Kappa from the University of Maryland, College Park graduated with high honors.
- Bobby Talebian: University of Tennessee College of Law where he served on Law Review. Go Vols!
- The Honorable Davis S. Ferriero: worked his way up from a Navy Corpsman, saving lives (God bless you. Thank you for your service.) to a Presidential appointment by Barack Obama as 10th Archivist of the United States of America.

- Associate Attorney General Vanita Gupta: graduated magna cum laude from Yale University and received her law degree from New York University School of Law.

OGIS AND DOJ OIP FUNDING DEFICIENCIES AND PUBLIC COMMENTS POSTING

Many of you know, I have been working hard with Congress and others to secure adequate funding for OGIS and DOJ OIP for their statutorily mandated FOIA compliance missions, and in the case of OGIS their additional statutorily mandated mediation mission. The situation is dire. Ms. Semo and Mr. Talebian state that it is. In fact, the situation is worse than dire. OGIS and OIP are the police officers on the beat for FOIA compliance, and as we have all seen when there are few cops on the beat lawlessness and anarchy ensue.

Some of the people that I am talking to fought to bring OGIS into existence. Some are openly disappointed. Some have stronger feelings. Congress intended for OGIS to be powerful and independent, but Congress did not allocate additional resources for OGIS or DOJ OIP in the FOIA Improvement Act of 2016. Some are now advocating for removing OGIS from NARA with direct funding from and reporting to Congress.

I want NARA to succeed. I want OGIS and OIP to succeed. I want this Council to succeed.

So, I submit many thoughtful and constructive Public Comments making the case for additional funding and with recommendations for improving FOIA and. I hope you consider my recommendations.

UNLAWFUL CHIEF FOIA OFFICERS MEETINGS.

But first, the headline of this meeting, and it must be the first statement of the meeting minutes, because it is the most important thing here today. Let me read this.

Public Law No: 114-185, **The FOIA Improvement Act of 2016. It is on most everyone's FOIA websites: OGIS, DOJ OIP, many of your websites.**

“There is established in the executive branch the Chief FOIA Officers Council (referred to in this subsection as the `Council').

“(B) Not less frequently than annually, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present oral and written statements to the Council.

“(C) <<**NOTE: Deadline.>> Not later than **10 business days** before a meeting of the Council, notice of such meeting shall be published in the Federal Register.”**

Ladies and gentlemen, that 10 business day notice in the Federal Register did not happen. This is an illegal, unlawful meeting and this is not the first time this has happened.

- For the October 4, 2018 meeting the notice was published on September 25, 2018. That is not 10 business days.
- Then, many of you participated in an OGIS/DOJ OIP co-sponsored closed November 5, 2020 meeting with over 400 Government personnel and contractors, according the OGIS FOIA Ombudsman Blog and the OGIS website. You are allowed to hold closed meetings, which is what I believe this was, but you still have to announce a closed meeting in the Federal Register and state why it is closed. Of concern, whatever you call that meeting/webinar/whatever, when I submitted a FOIA request to OGIS seeking records, OGIS stated it was purely an OIP meeting and (I quote) “Therefore we do not have records responsive to this request.”
 - So, the OGIS FOIA Ombudsman & OGIS website, boast that it is OGIS & OIP co-hosted, but according to OGIS: not our meeting; no records. Let that sink in for a moment. Many of you were there.
- For today’s November 17 2021 meeting, the Federal Register announcement was not published until November 9th; the same day I complained to NARA who manages the Federal Register. Forget about Veterans Day and weekends for 10 business days’ notice, November 9th is not even 10 calendar days.

So, I am asking here today of the Archivist of the United States, The Honorable David. S. Ferriero, and the Associate Attorney General, The Honorable Vanita Gupta, “What are the consequences for repeatedly breaking the law? If the underlying issue is inadequate resources and beleaguered staffs stretched too thin, what are you doing today to fix that by reallocating resources now and budgeting adequate funding going forward? What are you doing to allow members of the Public ample time to make and present substantive oral comments and to have substantive written public comments publicly posted, as I believe is mandated by law?”

I also note that it took OGIS six months to release - just days ago - the two-page meeting minutes for the April 29, 2021 Chief FOIA Officers Council meeting. Funding/staffing shortages notwithstanding, that is unacceptable. I am asking this Council to require meeting minutes within 30 days, which is still too long, given that there are advance copies of briefings and contemporaneous transcripts. It takes the same amount of time whether you complete the minutes in a week or in six months.

MY PUBLIC COMMENTS.

I do not believe that it was the intent of Congress or President Barak Obama that Oral Public Comments should be arbitrarily limited to 15 minutes per year in one Chief FOIA

Officers Council open meeting.

Weeks ago, I asked OGIS and OIP for time today brief a couple of my Public Comments where I am seeking policy decisions from the Council. My request was not granted. I received no reply whatsoever. As there is not time to do that today, I am asking this Council to reconvene within two months to address “Public Requester FOIA Compliance Concerns,” hear my briefings, and decide on my recommendations.

Ms. Gupta, Ms. Semo, Mr. Talebian, can we do that?

Let me briefly outline some of my Public Comments,

There is a page on the OGIS website entitled: **Public Comments Submitted to the CFO Council.**

Though not all of mine are there, you will see nine of my Public Comments. I hope you will consider them. Thank you Ms. Semo and Mr. Talebian for posting them. While I cannot do them our you justice in my few minutes time, I will try to summarize these nine.

1. **Robert Hammond - October 28, 2021 - Failure: FOIA Compliance Oversight & Funding**

- a. This 132-page briefing gets to the heart of insufficient funding for OGIS and DOJ to perform their statutory FOIA compliance missions, and in the case of OGIS its additional mediation mission. The graphics and text on pages 6, 11, 14 & 15 set the stage, with carbon copies as noted on the cover slide.
- b. There is a total failure of FOIA compliance oversight by both DOJ Office of Information Policy (DOJ OIP) & Office of Government Information Services (OGIS) due in large part to grossly inadequate funding, which they both admit.
- c. In our military, when commanders do not stand up and tell the boss (or the boss does not listen), “I cannot accomplish the mission with these resources, the mission will fail,” people die. And the American citizens demand accountability. Here, FOIA dies in darkness.
- d. In addition to making a compelling case for NARA and DOJ to increase funding for OGIS and OIP, my briefing includes (at page 7) four Compliance and Oversight proposals to strengthen FOIA compliance accountability and oversight using the NARA Unauthorized Records Disposition Program model.
- e. I would like to brief this presentation (with slides to do it justice) and seek your concurrence with my proposals.

2. **Robert Hammond - October 22, 2021 - Update 2021.10.22. OGIS Mediation and DOD's change to 32 CFR part 286.4.**

- a. DOD has stated in appellate determinations and through their FOIA Public Liaisons that DOD does not have to include the mandatory right to OGIS Dispute Resolution in its Initial Denial Authority and Appeals letters, citing 32 CFR part 286.4 as the basis, and the Director of OGIS agreed with that unlawful position, which the Director later correctly walked back. “The Director of OGIS.” Let that sink in for a moment. Why would that happen? Ms. Semo is one of the smartest people on the planet, I believe that.
- b. It all comes down to grossly inadequate funding to conduct mediation and, I believe, a Federal Agency-wide endeavor to therefore “disappear OGIS mediation workload. I am gathering supporting records to document my hypothesis and the genesis of the unlawful OGIS position on mediation.
- c. The situation is worse than dire. **In 2013 OGIS had \$1.629M** with a mediation caseload of 300 – 400 cases per year. That grew to over 4,600 cases with only **\$1.2M by 2020**, despite inflation and mandatory pay raises. All the while, NARA got every dime that they asked for in 2019: **\$377.8M**. Whether Office of Management and Budget (OMB) budgetary guidance may have constrained NARA is an open question.
- d. There were two overburdened people at OGIS on the compliance team and three on the mediation team for over 4,600 mediation cases with one of staff member allocated full time to the FOIA Advisory Committee (according to public records). And it is likely that same beleaguered, stretched too thin, staff

member is tasked with preparing timely Federal Register Notices for the Director's signature. What outcome should we expect from this dire funding shortfall?

- e. Mr. Ferriero & NARA, please fund OGIS. Ms. Gupta & DOJ, please fund DOJ OIP.
- f. Part of the problem is that the FOIA Improvement Act mandated additional responsibility but did not allocate any additional funding. However, per statute (and I quote):

“The Director of the Office of Government Information Services shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States, including the Department of Justice, the Archivist of the United States, or the Office of Management and Budget before submitting to Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments.”

- g. DOJ OIP also has a direct communications line to Congress and has not fought for additional funding in past Congressional testimony under prior leadership. Go Bobby. Go Vols.
- h. The bottom line is that NARA and DOJ currently have responsibility for funding OGIS and OIP respectively. In my decades of experience, you never get funding

unless you ask for it with compelling budget justifications that document the urgent need above other competing priorities.

- i. Meanwhile, we are in a continuing resolution or CR where no new initiatives may be undertaken no matter who wants them. Stand up and say, “No.” I have respectfully asked Mr. Ferriero to cease all spending on a **\$20M new** initiative with a proposed **144 new federal employees** that will never go away and instead internally reallocate funding toward the OGIS statutorily mandated missions. Parenthetically (As to that pet rock project, if pursued in FY 2023, the stated objectives are not inherently governmental and best suited for short-term contractor support, not transformative 144 new career federal employees, which may be the unstated goal. Do the A-76 study.)
- j. I now ask DOJ to similarly reallocate funding to OIP, so that OIP’s next Congressional testimony will be about success.

3. Robert Hammond - October 22, 2021 - OGIS Posting Policy for Public Comments

- a. This addresses changes made to the OGIS Posting Policy for Public Comments made on September 27, 2021, two days before responding to a Congressional inquiry on that matter.
- b. The September 27, 2021 altered public comments posting policy contains language that appears contrary to governing laws, regulations, and policies, effectively censoring public comments.

- c. Working from that September 27, 2021 document, I have indicated the needed deletions to the non-complaint September 27, 2021 Posting Policy for Public Comments in double strikethrough and additions in bold blue italics, with additional clarifying comments as to why these changes are needed cited in Appendix B.
- d. I asked for an opportunity to brief this topic and have this Council consider my recommended changes. At this point, it may be prudent for NARA to staff my recommended changes with this Council and FOIA Advisory Committee for markup and discussion/approval at their next, near-term meetings.

4. **Robert Hammond - October 22, 2021 - Senator Grassley: DOJ OIP's Position Doesn't Pass the "Common-Sense Test"**

- a. Self-explanatory, particularly with Release to One, Release to All.
- b. On that issue, I proposed a solution in a separate briefing entitled Recommended System Change Requests to FOIAonline. Including Simple Solution for "Release to One, Release to All. Bottom line, agencies open your FOIA portals and the records in them to the public, subject to requester approval, as the popular commercial MuckRock.com portal does.
- c. Mr. Talebian, wouldn't you want to go to the next Congressional hearings with a success in that area, given what happened to OIP last time?

5. [Robert Hammond](#) - [October 22, 2021 - NARA, Please Fund OGIS!! \(PART 1\)](#)

- a. This briefing recognizes the Archivist of the United States, The Honorable David S. Ferriero; the very accomplished Office of Government Services (OGIS) Director, Alina Semo; and the extraordinary, dedicated OGIS Staff, particularly the FOIA Compliance Team: **Kirstin B. Mitchell and Christa Lemelin**. the Mediation Team: **Carrie McGuire, Dwaine Bacon, and Jessica Hartman**.
- b. It addresses some of my efforts advocating for NARA budget requests that fully fund OGIS - with compelling, candid supporting justifications documenting what OGIS cannot accomplish absent such increased funding. Seemingly, a twenty-fold increase, in my view.
- c. I have pressed to discontinue unlawful, inaccurate citations in FOIA determination and appeal letters throughout the Federal government (including OGIS, DOJ, DOD, etc.) that “disappear’ or reduce OGIS mediation workload by omitting or misinforming requesters of their statutory mandatory rights.
- d. I have not walked a mile in Mr. Ferriero’s or Ms. Semo’s shoes. My comments are observational. I need your help. The American citizens need your help.

6. [Robert Hammond](#) - [May 3, 2021 - Recommended System Change Requests to FOIAonline. Including Simple Solution for "Release to One, Release to All"](#)

- a. I offered through OGIS to help the Technology Committee(s). I have decades of experience graduate degrees and certifications in federal information technology, public administration, financial management, procurement, and other disciplines.
- b. FOIAonline, apart from a case management system, is the best of the federal requester portals. FOIA.gov, FOIA Star, PAL, and others by comparison are crude, poorly designed portals, in my view, and lack basic functionality of even Muckrock.com, which is a very good a commercial portal that has solved release to one- release to all by allowing the requester to choose when, if ever, to make case records public.
- c. My suggested system changes are self-explanatory, with most directed at eliminating cheating by some few but large entities. Some data entered by repeat offender agencies is materially inaccurate, and the date-and-time-stamped electronic records are manually overridden to produce massively false Annual FOIA reports by not even reporting many years old open FOIA requests and appeals. This has been ongoing for years and is widely known. I have been seeking OGISs audits of source records against annual FOIA reports and FOIAonline and other systems for years. OGIS is seeking from Congress public hearings and point in time GAO audits, which I support. However, would it not it be better for NARA to justify and seek from Congress full funding for OGIS to do the audits themselves and have a success story at the

next Congressional hearings. Perhaps the enormity of long-standing fraud will shake loose the dollars needed for OGIS to perform the compliance work that Congress intended.

- d. As to the much discussed and Congressional interest in Release to One, Release to All (which MuckRock has solved), just open the data in federal FOIA portals and case management systems. In my FOIA requests through FOIA online, I mandate that my FOIA requests and all data associated with them be discoverable by any member of the public, which is the default setting in FOIAonline which must be overridden to do otherwise.
- e. Though required by law to honor the format of records release, even NARA and DOJ completely shield my FOIA requests and appeals, and the actions taken on them from the public. For example, if you go to FOIAonline and search my requests you would see a notice stating:
“The description of this request is under agency review,” even for requests closed years ago. Some queries return a statement “you are not authorized to access this page.”

DOJ-2019-000001	Request	Under Agency Review	Under Agency Review	10/01/2018	10/30/2018	Closed
NARA-NGC-2021-000248	Referral	Mr. Robert Hammond	Under Agency Review	12/08/2020	01/08/2021	Closed

f. I highlight NARA and OIP here to get their attention and support in shutting down the egregious offenders and fraudsters.

7. [Robert Hammond](#) - May 3, 2021 - OGIS Mediation and DOD's change to CFR 32 part 286.4.4

a. See October 22, 2021 - Update 2021.10.22. OGIS Mediation and DOD's change to 32 CFR part 286.4.

8. [Robert Hammond](#) - May 3, 2021 - Status of 2018 - 2020 Recommendation #19.

- a. Recommendation #19 states:
- b. “ The Office of Government Information Services (OGIS) will ask Congress to engage in regular and robust oversight of FOIA, hold more hearings, establish regular and coordinated communication with agencies around FOIA issues, and strengthen OGIS with clearer authority and expanded resources.”
- c. For my part, I am working with Congress and a consortium of FOIA advocacy groups to have Congressional hearings, testimony, and GAO audits, first as to the effectiveness/ineffectiveness of OGIS and DOJ OIP and their inadequate funding (get police officers on the beat) and then to address systemic compliance issues, malfeasance, lack of integrity and lack of accountability in the FOIA process. I hope to have OGIS and OIP as allies going forward.

9. **Robert Hammond - May 3, 2021 - Violations of the ADA in FOIA Redactions.**

- a. Self-explanatory as to how to produce ADA complaint documents with the built-in functionality of MS. Office and Adobe Acrobat. No requester should ever again receive redactions in 6-point font against a black background.
- b. Take the win. OGIS and DOJ OIP publish advisories to help agencies and end this nonsense.

PUBLIC COMMENTS SUBMITTED BUT NOT POSTED

A. DESTRUCTION AND ALTERATION OF FOIA RECORDS – DOD, ARCHIVIST OF U.S. OVERSIGHT

- a. In lieu of formal FOIA mediation, Ms. Semo directed me to the NARA unauthorized disposition website, which I had already been using. NARA's Chief Records Officer oversees unauthorized disposition, destruction or alienation of federal records complaints or voluntary agency reports, and posts case numbers and summary correspondence to the NARA website. NARA requires Agencies to investigate allegations and provide a response within 30 days in accordance with 36 CFR 1230.16. However, NARA has been remis in not closing cases, including eight of my meticulously documented cases involving FOIA records dating back to more than a year ago.
- b. My Public Comment Presentation simply adds the full records for seven of my **open complaints (dating back more than a year) regarding destruction of alteration of records sought via FOIA**, along with my correspondence to the Archivist of the United States.
- c. It is not clear why NARA refused to post this presentation. From NARA's website (<https://www.archives.gov/records-mgmt/resources/unauthorizeddispositionoffederalrecords>) those open cases are:
 - **UD-2021-0004. Navy destruction of financial, contracting records**
 - **UD-2021-0033. Navy destruction of moot appellate determination records**

- **UD-2021-0017. Navy destruction of Walter Reed’s FY 2013 FOIA Report records**
- **UD-2021-0018. Defense Health Agency (DHA) destruction of Walter Reed’s FY13 & FY 14 FOIA/Privacy reporting chain of command records**
- **UD-2021-0019. Defense Health Agency. Walter Reed’s destruction of certified mail records [sought under FOIA]**
- **UD-2021-0020. Defense Health Agency. Alteration and unlawful destruction of Walter Reed’s FY 2013 FOIA processing logs (FOIA Report Raw Data)**
- **??? 4/17/2021 3:47 PM DHA/Walter Reed during litigation destroyed original records related to my FOIA Request WRNMC #14-R of April 28, 2014 or they are in danger of imminent destruction.**
 - **Despite being submitted on April 17, 2021(seven months ago), with multiple follow-ups and NARA being required to notify the agency within 5 days in cases of alleged imminent destruction, NARA opened a case for these allegations just over two weeks ago on October 29, 2021 after I sent my first draft of this presentation to NARA’s OGIS. Any destruction of records after April 17, 2021falls on NARA, in my view. I add this for context as a possible reason for NARA not posting this presentation**

(along with egregious error in a General Records Schedule for FOIA records).

- **UD-2022-0006.** Allegation that records subject to an April 2014 FOIA request were unlawfully destroyed and/or are in imminent danger of early destruction.

d. There is one new complaint. **UD-2021-0018. Unlawful destruction or imminent danger wrt October 7, 2018 FOIA Request (DHA 19-D, Records of Hammond Communications 2015.**

B. Mandatory Right to OGIS Dispute Resolution

- a. The content of this briefing is largely replicated in other posted comments, which begs the question as to why this briefing as not been posted.

C. OGIS response Hammond public comments 9 July 2021

- a. In this correspondence, the OGIS Director states her position as to what OGIS will and will not post to the FOIA Advisory Committee, Chief FOIA Officers Council and NARA Open Public meetings, as well as denying me the opportunity to participate with the Technology Committee apparently without consulting that Committee.

- b. If the Director, wishes to amend those comments, lets post them both, learn from the exercise, and move on.

CLOSING REMARKS

1. Great meeting today, but unlawfully held.
2. Great people at OGIS and DOJ OIP, but grossly under-resourced and not enough of them.
3. NARA and DOJ should take immediate action to properly resource OGIS and OIP respectively, based on significant, mission failure in not doing so. The situation is dire. We need an “American OGIS and OIP Rescue Plan” and an “OGIS and OIP Build Back Better Plan” from Congress and the Executive branch.
4. The Chief FOIA Officers Council must post all of my public comments, or state publicly the statutory or other basis for not doing so.
5. This Council should reconvene within two months to address “Public Requester FOIA Compliance Concerns,” hear my briefings, and decide on my recommendations. I do not believe that it was the intent of Congress or President Obama that Oral Public Comments should be arbitrarily limited to 15 minutes per year in one Open Meeting.

Thank you considering my oral comments and written public comments.

I would like to close with words of proud American citizens: Gouverneur Morris, Abraham Lincoln and Martin Luther King.

We The People, enshrined in our Constitution, will not again be a house divided against ourselves no matter the rhetoric. In 1865, 165 years ago, we fought and won a bloody war to advance equality of opportunity, not guaranteed equity of outcomes as we are all unique in our pursuit of our dreams. Messy as it sometimes is, that is Our history. The greatest nation in the history of the world.

Let us all be judged by the content of our character.

God bless the United States of America!

We The People. Declaration of Independence!

I am coming to you today from the ancestral lands of proud, unified, inclusive American citizens. **We The People of the United States of America.**

Thank you considering my oral comments and written public comments.

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The Declaration of Independence IN CONGRESS, July 4, 1776.

The unanimous Declaration of the thirteen united States of America,
When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath