Committee on Oversight and Government Reform

U.S. House of Representatives

114th Congress

Cover Oregon:

How Mismanagement and Political Interference Squandered $305 Million Federal Taxpayer Dollars

Majority Staff Report

May 25, 2016

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Table of Names

Office of the Governor

John A. Kitzhaber
John Kitzhaber served as the Governor of the State of Oregon from 1995 to 2003 and from 2011 to 2015. He resigned on February 18, 2015.

Michael Bonetto
Michael Bonetto served as Kitzhaber's Health Policy Adviser from 2011 to January 2014. He served as Kitzhaber's Chief of Staff from January 2014 to February 2015. He also was a member of a team of campaign advisers for Kitzhaber, titled Area 51. The Area 51 team was designed to provide oversight to the campaign staff and consultants and was described as a group of supporters that were personal friends of the Governor and the First Lady.

Dmitri Palmateer
Dmitri Palmateer served as Kitzhaber's Legislative Director and Deputy Chief of Staff.

Sean Kolmer
Sean Kolmer served as Kitzhaber's Health Policy Adviser from March 2011 to October 2013 and January 2014 to February 2015. He served at the Oregon Health Authority temporarily when he left the Office of the Governor in October 2013.

Duke Shepard
Duke Shephard served as a Policy Adviser within the Office of the Governor under Kitzhaber.

Nkenge Harmon Johnson
Nkenge Harmon Johnson served as Kitzhaber's Communications Director from January 2014 to July 2014.

Cover Oregon

Elizabeth (Liz) Baxter
Liz Baxter served as the Chair of the Cover Oregon Board of Directors.

George Brown
George Brown served as a Member of the Cover Oregon Board of Directors.

Rocky King
Rocky King served as the Executive Director of Cover Oregon from 2010 to December 2013.

Bruce Goldberg
Bruce Goldberg served as the Director of the Oregon Department of Human Services from November 2005 to February 2011 and led the formation of the Oregon Health Authority as the

Director from February 2011 to 2013. He served as the interim Executive Director of Cover Oregon from December 2013 to April 2014.

Clyde Hamstreet
Clyde Hamstreet is a Turnaround Professional and founded Hamstreet & Associates. He served as the acting Executive Director of Cover Oregon from April 2014 to June 2014.

Aaron Patnode
Aaron Patnode was a member of the Technology Options Workgroup (TOW) convened to explore the technology options for Cover Oregon in March 2014. He served as the Executive Director of Cover Oregon from June 2014 to March 2015.

Alex Pettit
Alex Pettit is the Chief Information Officer for the State of Oregon. He began in that role in January 2014. He served as the interim Chief Information Officer of Cover Oregon beginning in April 2014 and started to shift away from that role in June 2014.

Aaron Karjala
Aaron Karjala served as the Chief Information Officer of Cover Oregon from 2011 to 2014.

Triz delaRosa
Triz delaRosa served as the Chief Operating Officer of Cover Oregon from 2011 to 2014.

Carolyn Lawson
Carolyn Lawson served as the Chief Information Officer of the Oregon Health Authority from 2011 to December 2013.

Tina Edlund
Tina Edlund served as the Acting Director of the Oregon Health Authority from December 2013 to May 2014. She served as the Transition Project Director for the project to move health plan eligibility and enrollment functions from Cover Oregon to the federal exchange and the Oregon Health Authority. She served in that role from May 2014 to December 2014.

Patty Wentz
Patty Wentz served as the Communications Director at the Oregon Health Authority.

Campaign Advisers & "Unpaid Advisers" to former Governor Kitzhaber

Patricia McCaig
Patricia McCaig was a member of Kitzhaber's Area 51 team. She also served as an "unpaid adviser" on a team for Kitzhaber that focused on addressing Cover Oregon issues.

Tim Raphael
Tim Raphael served as a Communications Director within the Office of the Governor from January 2011 to December 2013. He worked as a consultant to the Office of the Governor from

January 1, 2014 to January 31, 2014. Then, from February 1, 2014 to November 4, 2014, a public affairs firm that employed Raphael was retained by Kitzhaber's campaign to serve as a communications consultant. Raphael also was a member of Kitzhaber's Area 51 team. He also served on a team for Kitzhaber that focused on addressing Cover Oregon issues.

Kevin Looper
Kevin Looper was a member of Kitzhaber's Area 51 team. He also served as an "unpaid adviser" on a team for Kitzhaber that focused on addressing Cover Oregon issues.

Mark Wiener
Mark Wiener was a member of Kitzhaber's Area 51 team. He also served as an "unpaid adviser" on a team for Kitzhaber that focused on addressing Cover Oregon issues.

Cylvia Hayes
Cylvia Hayes was Kitzhaber's fiancée. She was a member of Kitzhaber's Area 51 team.

CMS

Marilyn Tavenner
Marilyn Tavenner served as the former Administrator of the Centers for Medicare and Medicaid Services.

Gary Cohen
Gary Cohen previously served as the Director of the Center for Consumer Information and Insurance Oversight (CCIIO).

Amanda Cowley
Amanda Cowley previously served as the Acting Director of the State Exchange Group at CCIIO.

Jennifer Stolbach
Jennifer Stolbach is the Acting Director of the State Exchange Group at CCIIO. She previously served as the Deputy Director for the State Exchange Group at CCIIO.

Teresa Miller
Teresa Miller previously served as the Acting Director, Office of Oversight, at CCIIO.

I. Executive Summary

The Patient Protection and Affordable Care Act (PPACA) required all states to operate a health insurance exchange by January 1, 2014 or have the federal government operate one for them.[1] Oregon chose to have a state-based exchange supported by its own IT platform, and was awarded $305 million dollars from the Department of Health and Human Services (HHS) to build its exchange—Cover Oregon.[2] Oregon attempted to modernize its entire health care technology system and create an integrated system that provided eligibility determination and enrollment services for both Qualified Health Plans (QHPs) and state-based public health care programs, such as Medicaid. This proposal was described by the first Executive Director of Cover Oregon as having the most robust scope of any health insurance exchange.[3]

Cover Oregon's website was scheduled to launch on October 1, 2013, and despite numerous warnings about project development, Oregon issued unrealistic public assurances about the launch date. According to a letter written by Cover Oregon's former Chief Operating Officer, Triz delaRosa, the leadership team at Cover Oregon met with former Governor Kitzhaber's staff on a monthly basis from June through October 2013 and provided accurate information about the website and the status of the budget for the project.[4] DelaRosa claims that, despite these meetings, the Governor's office nevertheless released "unrealistic public assurances about the viability of the project and the ability of individuals to enroll through the Cover Oregon website."[5] Some stakeholders believed pressure from the White House caused the states to be reluctant to miss the October 1, 2013 target.[6] Ultimately, Cover Oregon had to delay the launch of the website and instead use a hybrid process to enroll individuals. The hybrid process required call center staff to manually enter applications submitted by paper or a fillable PDF into a core component of the technology.[7]

Documents and testimony show several factors contributed to the delayed launch. First, the PPACA set aggressive timelines and Centers for Medicare & Medicaid Services (CMS)

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[1] Pub. L. No. 111-148 § 1311 (March 23, 2010).
[2] CMS, the Center for Consumer Information & Insurance Oversight (CCIIO), *Creating a New Competitive Health Insurance Marketplace* (last visited April 27, 2016), https://www.cms.gov/cciio/resources/marketplace-grants/; U.S. Gov't Accountability Office, *State Health Insurance Marketplaces: CMS Should Improve Oversight of State Information Technology Project*, at 86 (Sept. 2015) (GAO-15-527).
[3] First Data, *Cover Oregon Website Implementation Assessment: Assessment Report*, at 7 (updated April 23, 2014) (hereinafter "First Data Report").
[4] Letter from Triz delaRosa to Bruce Goldberg, Office of the Director, Cover Oregon, and Liz Baxter, Chair of Board of Directors (April 7, 2014), http://media.oregonlive.com/health_impact/other/delaRosaclaim.pdf.
[5] *Id.*
[6] In 2016, HHS OIG noted "CGI Federal [the vendor hired to build the core of the overall Federal Marketplace system] reported that it did not request additional time or formally request that CMS delay the launch because it believed CMS would not delay due to the White House's public commitment to launch on October 1, 2013." United States Department of Health and Human Services, Office of Inspector General, *HealthCare.gov: CMS Management of the Federal Marketplace* (February 2016); Email from Bob Cummings to Representative Richardson (Aug. 21, 2013).
[7] CMS, Office of Information Services, *State-Based Marketplace End of Open Enrollment State Report: Oregon* (March 31, 2014) (COVEROR 000025).

delayed issuing many regulations and guidelines for the exchanges.[8] Moreover, CMS failed to conduct adequate oversight of the project. During project development, CMS congratulated Cover Oregon for its progress on developing the state-supported IT platform while the Quality Assurance vendor for the project identified the overall risk level for the project as high.[9]

Oregon also failed to properly manage the project and its scope. Cover Oregon attempted to build a more complex system than federal law required and was continuously warned of the risks associated with their ambitious vision for the project.[10] Oregon assumed responsibility for overseeing and coordinating the project and elected to serve as its own systems integrator even though, according to the current Chief Information Officer for the State of Oregon, Alex Pettit, Oregon did not have the capacity to serve in this role.[11] The overall experience in Oregon is similar to the disastrous launch of HealthCare.gov.[12] In that case, CMS also chose to act as its own systems integrator for the HealthCare.gov project and, according to a January 2015 report issued by the Department of Health and Human Services Office of Inspector General, this decision was one of the main reasons for HealthCare.gov's failed launch on October 1, 2013.[13]

The Cover Oregon project also suffered from budgeting issues. Oregon sought funding from various federal sources. States with different funding mechanisms for their technology projects were required to allocate shared costs among Medicaid, the Children's Health Insurance Program (CHIP), and the commercial marketplace consistent with federal cost allocation principles.[14] Documents show that in May 2013, the Executive Director of Cover Oregon did not believe that the Oregon Health Authority was properly tracking the use of federal funds.[15] This raises concerns about Oregon's compliance with rules and regulations that apply to managing and spending federal funds.

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[8] Maximus, Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report, at 4 (Feb. 15, 2013) (GOV_HR00045693-27); United States Department of Health and Human Services, Office of Inspector General, *HealthCare.gov: CMS Management of the Federal Marketplace*, at 9 & 11 (February 2016).

[9] *See* Email from Mike Bonetto to Rocky King, Sean Kolmer, copying Amy Fauver, Aaron Karjala, Carolyn Lawson, Kelly Harms, Lisa Morawski, Nora Leibowitz, Triz delaRosa, Tom Jovick, (Jan. 13, 2013) (GOV_HR00013743-45).

[10] *See, e.g.*, H. Comm. on Oversight & Gov't Reform Transcribed Interview of Alex Pettit, Tr. at 51-53 (April 13, 2016); First Data Report, at 7.

[11] *See* CMS, *Technical Assistance Report For: Oregon Health Insurance Marketplace*, at 3 (Feb. 27, 2014) (COVEROR 000041-000065)("Oregon chose to act as its own system integrator and partnered with Oracle to develop their solution in June 2011."); First Data Report, at 6 ("However, soon after Carolyn Lawson began employment at OHA in July 2011, she made the decision not to use a system integrator. This decision was approved by the OHA Director."). During his transcribed interview, Alex Pettit acknowledged that he did not work for the state of Oregon until January 2014, but from his review of materials he believed that Oracle was performing some of the functions of the system integrator but was unsure whether the company was contractually obligated to do so. Pettit, Tr. at 19-21 & 26-27.

[12] United States Department of Health and Human Services, Office of Inspector General, *HealthCare.gov: CMS Management of the Federal Marketplace* (February 2016).

[13] U.S. Department of Health and Human Services, Office of Inspector General, *Federal Marketplace: Inadequacies in Contract Planning and Procurement*, OEI-03-14-00230, at 12 (Jan. 2015).

[14] *See, e.g.*, U.S. Department of Health and Human Services, Office of Inspector General, The District of Columbia Claimed Allocated Costs to Its Establishment Grants in Accordance with Federal Requirements (Nov. 2015), http://oig hhs.gov/oas/reports/region3/31403300.pdf.

[15] Email from Rocky King to Aelea Christofferson (May 3, 2013) (GOV_HR00018537).

The project was also undermined by questionable contracting practices. Cover Oregon contracted with the primary technology vendor for the project, Oracle, on a "time and materials" basis, rather than using contracts that linked payments to specific deliverables.[16] CMS entered into similar types of contracts with its primary technology vendor for HealthCare.gov, and in a February 2016 report, OIG criticized CMS's IT contracting on that basis.[17]

HealthCare.gov was made operational shortly after its disastrous launch by a "tech surge" and Cover Oregon was able to accomplish this as well. Documents show the state-supported information technology platform for Cover Oregon was close to being fully operational in April 2014. On March 27, 2014, the Technology Options Workgroup (TOW)[18] completed its initial assessment and "recommended that Cover Oregon should continue development and deployment of the current technology solution with a new vendor while actively retaining the ability to migrate to the FFM solution as a contingency if key Cover Oregon milestones were missed."[19] The group termed it a "100 Day Plan."

The group set June 30, 2014 as the "last go/no go formal decision point."[20] The technology was successfully being used by community partners and agents to enroll Oregonians in early 2014.[21] At the Cover Oregon Board of Directors meeting on April 10, 2014, a regional insurance broker talked about his positive experience with the agent portal to enroll individuals and said the process takes about 20 minutes. He expressed that the portal was greatly improved and he was impressed with the system.[22]

In April 2014, however, the Cover Oregon Board of Directors voted to switch to HealthCare.gov instead.[23] Due to media reports highlighting potential concerns with Cover Oregon's decision to switch to HealthCare.gov,[24] the Committee launched an investigation of the decision and CMS's oversight of Cover Oregon.[25] For more than one year, the Committee

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[16] First Data Report, at 4, 7 & 36.
[17] United States Department of Health and Human Services, Office of Inspector General, *HealthCare.gov: CMS Management of the Federal Marketplac*e, at 14 (February 2016).
[18] The Technology Options Workgroup (TOW) was a group of technology experts convened by Cover Oregon to evaluate the technology options for the future of Cover Oregon. The group is also sometimes referred to as the Technology Advisory Group (TAG).
[19] Alex Pettit, PhD, State Chief Information Officer and Cover Oregon Acting Chief Information Officer, Cover Oregon Final Report, at 7 (May 8, 2014).
[20] *Id*. at 7.
[21] *See*, *e.g*., Email from Patty Wentz to Bruce Goldberg, Dmitri Palmateer, John Kitzhaber, Mike Bonetto, Nkenge Harmon Johnson, Patty Wentz, Sean Kolmer (Feb. 18, 2014) (GOV_HR00054663-64). Community Agents and partners include certified insurance agents and community partners that help individuals enroll in insurance coverage. *See* Oregon HealthCare.gov, Find an Expert in Your Area (last visited May 16, 2016), *available at* http://www.oregonhealthcare.gov/get-help-2.html.
[22] Oregon Health Insurance Exchange Corporation Board of Directors Meeting, Minutes, at 6 (April 10, 2014).
[23] Oregon Health Insurance Exchange Corporation Board of Directors Meeting, at 3 (April 25, 2014).
[24] *See*, *e.g*., Nigel Jaquiss, *Blurred Lines: How Kitzhaber's re-election campaign secretly shaped state policy around Cover Oregon*, WILLAMETTE WEEK (Nov. 11, 2014).
[25] Letter from Jason Chaffetz, Chairman, Committee on Oversight and Government Reform, U.S. House of Representatives, Jim Jordan, Chairman Subcommittee on Health Care, Benefits and Administrative Rules, Mark Meadows, Chairman, Subcommittee on Government Operations, Will Hurd, Chairman, Subcommittee on

investigated the State of Oregon's use of the $305 million award from HHS. The Committee obtained more than 170,000 pages of documents from the State of Oregon, CMS, Oracle, and other sources, and conducted four depositions and one transcribed interview.[26]

Documents and testimony show the Cover Oregon Board of Directors' decision to switch from the state-supported information technology platform to the federally-facilitated exchange, HealthCare.gov, was driven largely by political considerations and steered by Governor Kitzhaber's staff and campaign advisers. Rather than allow Cover Oregon staff and the Technology Options Workgroup to continue to develop and deploy the current technology solution, Kitzhaber's political operatives privately intervened and thwarted the work of the Technology Options Workgroup.

Documents show Kitzhaber's campaign advisers disagreed with the Technology Options Workgroup's preliminary recommendation,[27] and after a series of phone conversations between the Governor's office, Kitzhaber's campaign advisers, and Cover Oregon leadership, eventually it was decided that Cover Oregon should switch to HealthCare.gov.[28] Cover Oregon was running low on funds,[29] and on April 7, 2014, one of Kitzhaber's top political operatives, Patricia McCaig, told Kitzhaber that she thought asking for additional dollars would be politically risky and require "substantial political setup."[30] The day after an April 8, 2014 call about Cover Oregon between Kitzhaber's staff and political operatives and individuals from Cover Oregon (the acting Chief Information Officer of Cover Oregon, Alex Pettit, and the interim Executive Director of Cover Oregon, Bruce Goldberg), McCaig sent Kitzhaber an email outlining a plan to stage the decision to switch to HealthCare.gov.[31] From April 9, 2014 until April 25, Kitzhaber's staff and campaign advisers worked closely with Pettit, Goldberg, and Clyde Hamstreet to

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Information Technology to The Honorable John Kitzhaber, Governor of Oregon, Office of the Governor (Feb. 13, 2015).

[26] The Committee deposed (1) former Governor Kitzhaber's Chief of Staff, Michael Bonetto; (2) former Governor Kitzhaber's Health Policy Adviser, Sean Kolmer; (3) the former Director of the Oregon Health Authority and interim Executive Director of Cover Oregon, Bruce Goldberg; and (4) former Governor Kitzhaber's top political operative, Patricia McCaig. The Committee also interviewed the Chief Information Officer for the State of Oregon, Alex Pettit.

[27] A few days after the Technology Options Workgroup made the recommendation to continue to develop and deploy the current technology solution with a new vendor while actively retaining the ability to migrate to HealthCare.gov as a contingency, one of the Governor's campaign advisors circulated a draft memorandum to the Governor about recommendation. He said: "After a briefing from Alex Pettit, we have significant concerns about the recommendation of a '100-Day Plan' to continue the build-out of Cover Oregon's existing technology platform while also preparing for the possibility of moving to the federal exchange. We are convinced it would be a mistake for the board to send any signal at its meeting next week about next steps on technology." Email from Tim Raphael to Mark Wiener, Kevin Looper (April 3, 2014) (COGR_SHCBAR_KL_00882).

[28] According to the Governor's health policy adviser, Sean Kolmer, the Governor's office had a preference to move to HealthCare.gov and they made this preference clear to members of the Cover Oregon Board of Directors. H. Comm. on Oversight & Gov't Reform, Deposition of Sean Kolmer, Tr. at 52-53 & 165-166 (April 15, 2016).

[29] *See, e.g.*, Email from Mike Bonetto to Patricia McCaig (April 6, 2014) (McCaig Production 314-315) (emphasis added); H. Comm. on Oversight & Gov't Reform, Deposition of Bruce Goldberg, at 158 (April 6, 2016).

[30] Email from Patricia McCaig to John Kitzhaber (April 7, 2014) (McCaig Production PMc 00066-67).

[31] Email from Sean Kolmer to Mike Bonetto (April 8, 2014) (MBG2017872); Email from Patricia McCaig to Mike Bonetto (April 9, 2014) (McCaig October 15, 2015 Production 283).

prepare for the April 24, 2014 Technology Options Workgroup meeting and the April 25, 2014 Cover Oregon Board of Directors meeting.[32]

Documents and testimony show the involvement of Kitzhaber's staff and campaign advisers was inconsistent with the intent of Oregon law and the Cover Oregon governance model. The Oregon Legislature clearly established Cover Oregon as an independent public corporation governed by a Board of Directors. The Executive Director of Cover Oregon served at the pleasure of the Cover Oregon Board of Directors and was required to have an undivided fiduciary loyalty to Cover Oregon.[33] The Executive Director violated this fiduciary duty by relinquishing his decision-making authority to the Governor's office.

Documents also show state officials and the Governor's campaign advisers collaborated to such an extent that the lines between official and political activities became blurry. McCaig testified that Kitzhaber used "funds from his campaign . . . to assist him in his formal capacity, which is entirely legitimate to do, and that if there were campaign-related secondary items that -- and they were incidental and not the focus of this group of people's work at all."[34]

McCaig also testified: "What we did was use funds that were available out of the campaign to add capacity, in an appropriate and legal way, to work to support the Governor."[35]

Kitzhaber's staff and campaign advisers looked for ways to control the media and minimize the negative publicity for Kitzhaber as Cover Oregon floundered. They wanted to position Kitzhaber to make a definitive statement about the future of Cover Oregon and take steps that pivoted the press coverage away from the Governor's role in the failure of the project. For example, on April 25, 2014, the same day the Cover Oregon Board of Directors voted to switch to the federal exchange, one of Kitzhaber's campaign advisors, Christian Gaston, asked McCaig "when can the conversation shift to Oracle?"[36] Similarly, in May 2014, Kitzhaber told Bonetto and McCaig he was frustrated by the "free independent expenditure campaign that the Cover Oregon issue is giving to Dennis Richardson."[37] Dennis Richardson was the Republican candidate opposing Kitzhaber in Oregon's 2014 gubernatorial election.[38]

The next morning, McCaig emailed a list of possible actions which included, among other things, having Kitzhaber send a letter to Oregon Attorney General Ellen Rosenblum

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[32] *See*, *e.g.*, Email from Sean Kolmer to Mike Bonetto, copying Patricia McCaig, Tim Raphael, Patty Wentz, and Dmitri Palmateer (April 16, 2014) (MBG2008935); Deposition of Dr. Bruce Goldberg conducted by Committee staff, U.S. House of Representatives, Committee on Oversight and Government Reform, at 160 (April 6, 2016).
[33] *See*, *e.g.*, Email from Patricia McCaig to Mike Bonetto (April 8, 2014) (McCaig October 5, 2015 Production 362-363) (Email exchange includes a statement by an attorney from the Oregon Department of Justice noting that "The role of the Executive is described in statute and in Cover Oregon Board policies. We explained that our central concern is the interim Executive Director must have an undivided fiduciary loyalty to Cover Oregon…").
[34] H. Comm. on Oversight & Gov't Reform, Deposition of Patricia McCaig, Tr. at 43 (Feb. 25, 2016).
[35] *Id*.
[36] Email from Christian Gaston to Patricia McCaig (April 25, 2014) (McCaig October 15, 2015 Production 859).
[37] Email from John Kitzhaber to Mike Bonetto and Patricia McCaig (May 24, 2014) (MBG2002872).
[38] Amy Staver, *Gov. Kitzhaber defeats Dennis Richardson*, STATESMAN JOURNAL (Nov. 4, 2014), http://www.statesmanjournal.com/story/news/politics/elections/2014/11/05/gov-john-kitzhaber-defeats-dennis-richardson/18515889/.

requesting that she initiate legal action against Oracle. Kitzhaber sent the letter soon thereafter. After the letter was sent, Kitzhaber's campaign advisers, including Cylvia Hayes, congratulated McCaig on successfully pivoting the media's coverage about Cover Oregon.[39] Kitzhaber's Deputy Chief of Staff and Legislative Director, Dmitri Palmateer, emailed Bonetto, McCaig, and Duke Shephard the next day. In the email with the subject line "oracle yahoo stock page" Palmateer said: "Look at picture and the stories under their stock headlines. That is our goal . . . national stories that drag on their stock price. Probably coincident [sic] that their price dropped a bit in after hours trading but worth a dream anyway."[40]

The documents and testimony obtained by the Committee are consistent with the findings of a report by the Government Accountability Office (GAO), titled "State Health Insurance Marketplaces: CMS Should Improve Oversight of State Information Technology Projects." GAO found CMS failed to conduct adequate oversight over the $1.45 billion of federal taxpayer dollars invested in information technology (IT) projects supporting health insurance marketplaces.[41] With respect to Cover Oregon, the documents and testimony obtained by the Committee show CMS failed to conduct meaningful oversight of the project. The administrator of the majority of the federal grant funds was the Oregon Health Insurance Exchange Corporation (Cover Oregon).[42] It appears, however, that CMS failed to adequately monitor and address the excessive involvement of Kitzhaber's staff and campaign advisers in Cover Oregon policy decisions.

Furthermore, although HHS awarded Oregon $305 million to become a state-based exchange and build a state-supported IT platform, CMS welcomed Cover Oregon to HealthCare.gov with no strings attached. In fact, CMS ultimately encouraged the switch by adopting policies that enabled Oregon to "maintain a state face" even if it adopted the federal

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[39] Email from Dan Carol to Patricia McCaig, copying Cylvia Hayes, John Kitzhaber, Bill Wyatt, Tom Imeson, Curtis Robinhold, Stephen Bella, Steve Marks, Tim Raphael, Scott Nelson, Mike Bonetto, Mark Wiener, Mike Marshall, (May 29, 2014) (MBG2005425). Email from Cylvia Hayes to Patricia McCaig, John Kitzhaber, Bill Wyatt, Curtis Robinhold, Tom Imeson, Steve Marks, Stephen Bella, Scott Nelson, Dan Carol, Tim Raphael, Mike Bonetto, copying Mark Weiner, Mike Marshall (May 29, 2014) (MBG2005487).

[40] McCaig responded: "We must develop a strategy on all of this. It is too good. Who is the swat team?? I'm willing to do/get the work done." Email from Patricia McCaig to Dmitri Palmateer, copying Duke Shephard and Michael Bonetto (May 30, 2014) (MBG2007676). The Committee asked McCaig about this email exchange during her deposition, and McCaig said that her words were intended to be humorous. McCaig, Tr. at 220.

[41] U.S. Gov't Accountability Office, *State Health Insurance Marketplaces: CMS Should Improve Oversight of State Information Technology Project*, at 86 (Sept. 2015) (GAO-15-527).

[42] U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, the Center for Consumer Information & Insurance Oversight, Oregon Health Insurance Marketplace Grants Awards List (last visited May 16, 2016), *available at* https://www.cms.gov/cciio/Resources/Marketplace-Grants/or html. *See also* U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchanges, Funding Opportunity Number: IE-HBE-12-001, at 12-13 (Dec. 6, 2013).

technology.[43] CMS then allowed Oregon to retain 100 percent of the carrier assessment fee, therefore essentially allowing Oregon use the federal platform for free.[44]

II. Findings

Findings Related to CMS's Oversight of the Project

FINDING: CMS failed to adequately oversee the development and implementation of Cover Oregon. CMS officials applauded the progress at Cover Oregon and awarded the project additional federal dollars when, at the same time, the quality assurance vendor for the project rated the project's overall health as "high risk."

FINDING: CMS failed to ensure Cover Oregon and the Oregon Health Authority did not mishandle federal funds.

FINDING: CMS failed to ensure that Cover Oregon and the Oregon Health Authority adopted a realistic project scope.

Findings Related to the April 25, 2014 Cover Oregon Board of Director's Decision to Switch to HealthCare.gov

FINDING: The Governor's campaign advisers staged the decision to create the appearance that it was the Board's decision to move to HealthCare.gov. In fact, they manipulated the process to make their preferred outcome—moving to HealthCare.gov—the most likely outcome.

FINDING: The Cover Oregon Board of Directors was not provided with complete and accurate information about the different technology options.

FINDING: After the Board voted to move to HealthCare.gov, one member of the Board of Directors expressed concern that the Board acted as a public pass through for decisions that had already been made at the state level or by the Governor's advisors.

FINDING: After the Board voted to move to HealthCare.gov, Kitzhaber's staff and campaign advisers stayed involved in Cover Oregon.

[43] On April 8, 2014, CMS changed its position and told Kolmer and Goldberg they would consider any state that goes to HealthCare.gov a state based market, and therefore, there would be funding for some functions for the exchange. Email from Bruce Goldberg to Mike Bonetto and Sean Kolmer (April 8, 2014) (MBG2001625); Email from Patricia McCaig to Mike Bonetto (April 9, 2014) (McCaig October 15, 2015 Production 283).

[44] *See, e.g.*, Saerom Yoo, *Oregon exploring setting up own exchange, again*, STATESMAN JOURNAL (Jan. 13, 2016); Austin Bordelon, *Supported State-Based Marketplaces Forge New Option for States*, LEAVITT PARTNERS (Nov. 11, 2014).

Findings Related to the Status of the State-Supported IT Platform in April 2014

FINDING: After Cover Oregon failed to launch on October 1, 2013 as expected, the technology teams worked around the clock to fix the website. By February 2014, the exchange portal launched for use by community agents and partners in Oregon.

FINDING: On March 27, 2014, the group of technology experts convened by Cover Oregon to evaluate the different technology options believed that the current technology could be fixed to meet the minimum ACA requirements by the November open enrollment period. To do so, they recommended an 8-10 week focused effort with clear milestones and target dates. They recommended moving to the federal system as a fallback option if milestones were missed.

Findings Related to Project Development

FINDING: The Cover Oregon project suffered from an overly ambitious scope and risky contracting practices. Most of the contracts awarded by OHA and Cover Oregon specified that contractors were to be paid on a time and materials basis, rather than upon completion of certain deliverables.

FINDING: The Cover Oregon project suffered from bad governance. Even though there were a number of entities involved in project development, there was no single point of authority overseeing its development. These disparate entities did not always function as a cohesive unit.

FINDING: The Cover Oregon project suffered because Oregon decided to serve as its own systems integrator.

Findings Related to Widespread Political Interference by Campaign Staffers in Official Business

FINDING: The Governor's office mixed campaign business and official business. Kitzhaber's Chief of Staff, Michael Bonetto, coordinated his re-election campaign team and the Governor's official work on behalf of the state. The Governor's office used campaign funds to support the Governor in his official capacity.

FINDING: Kitzhaber's re-election campaign was concerned about the media coverage surrounding Cover Oregon and wanted to change the narrative in the media. Kitzhaber's political advisers made decisions about Cover Oregon with the Governor's reelection campaign in mind.

FINDING: 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.

FINDING: A substantial amount of Cover Oregon business was conducted through personal email accounts.

FINDING: Kitzhaber's campaign consultants orchestrated a letter to Oregon Attorney General Rosenblum asking her to initiate legal action against the primary vendor for the project, Oracle, shortly after Kitzhaber complained that his opponent in the gubernatorial election was benefiting from media coverage that linked the Governor to Cover Oregon's failure.

III. Introduction

The Patient Protection and Affordable Care Act (PPACA), signed into law in March 2010, required every state to operate a health insurance exchange by January 1, 2014, or have the federal government operate one for them.[45] To meet that deadline, the systems created by the states needed to be up and running by the start of the open enrollment period on October 1, 2013.

Oregon opted to set up a state-based exchange. While the PPACA provides a few general guidelines for the establishment and governance of an exchange, the states retain broad discretion in the establishment and operation of an exchange. In the authorizing legislation passed by the Oregon Legislature and signed by the Governor of Oregon, the state created an independent public corporation to administer its health insurance exchange.[46] The independent public corporation was called the Oregon Health Insurance Exchange Corporation, which later became branded as Cover Oregon.[47]

The PPACA provided funding for the U.S. Department of Health and Human Services to offer grants to support the planning and establishment of health insurance exchanges. Early in the planning process, the Centers for Medicare and Medicaid Services (CMS) identified Oregon as an "early innovator," and Oregon was awarded more than $300 million in federal taxpayers' funds.[48]

Like many state-based exchanges and the federally-facilitated exchange, the exchange in Oregon did not launch successfully on October 1, 2013. Cover Oregon instead used a temporary hybrid model to enroll Oregon citizens in plans for most of the 2013-2014 open enrollment period.[49] The model used a combination of core components of the technology and manual processes to enroll individuals while full functionality of the electronic system was finalized and tested.[50] Despite Cover Oregon's shortcomings, Oregon's 2013-2014 open enrollment period was relatively successful compared to the rest of the country.[51]

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[45] Patient Protection and Affordable Care Act ("PPACA"), Pub. L. No. 111-148, 124 Stat. 119 (2010). PPACA §§ 1311 & 1321.
[46] Oregon Senate Bill SB-99, 76th Legislative Assembly (2011 Regular Session).
[47] *Id*. *See also* Oregon Health Policy Board, Building Oregon's Health Insurance Exchange: A Report to the Oregon Legislature (Final Report, December 2010), http://www.oregon.gov/oha/action-plan/exchange-report.pdf.
[48] The Center for Consumer Information & Insurance Oversight (CCIIO), *States Leading the Way on Implementation: HHS Awards "Early Innovator Grants to Seven States,"* (Feb. 16, 2011); CCIIO, *Oregon Health Insurance Marketplace Grant Awards List* (last visited May 16, 2016).
[49] CMS, *Office of Information Services State-Based Marketplace End of Open Enrollment State Report: Oregon* (March 31, 2014) (COVEROR 000025).
[50] Maximus, *Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report*, at 3 (Feb. 15, 2014) (GOV_HR00045648-GOV_HR00045679); Cover Oregon, *Update to Cover Oregon Business Plan 2014-2015*, at 4 (May 28, 2014).
[51] Cover Oregon, *Update to Cover Oregon Business Plan 2014-2015* (May 28, 2014).

	Rank among all states and the District of Columbia	Rank among all state-based exchanges
Total gross enrollment	15th (of 51)	6th (of 15)
Percentage of population enrolled	7th (of 51)	7th (of 15)

Similar to HealthCare.gov, a "tech surge" made the state-supported IT platform in Oregon operable. Documents and testimony obtained by the Committee show that the website launched to agents and community partners in February 2014 and was functioning. On March 27, 2014 a group of technology experts convened by then Executive Director of Cover Oregon, Bruce Goldberg, to make a recommendation on the future technology decision for Cover Oregon. The group "recommended that Cover Oregon should continue development and deployment of the current technology solution with a new vendor while actively retaining the ability to migrate to the FFM solution as a contingency if key Cover Oregon milestones were missed."[52] The plan to move forward with the dual path approach was termed the "100 Day Plan."

Despite high enrollment and millions of dollars of sunk costs, on April 25, 2014, the Board of Directors of Cover Oregon voted to abandon the state-supported information technology (IT) platform and instead utilize the federal technology, HealthCare.gov. HealthCare.gov provided significantly less functionality and control to Oregon—one article described moving to the federal health insurance exchange as "a loss of control and less capability—think of it as a two-wheel-drive Chevy Nova compared to a Mercedes SUV."[53]

In March 2015, new Oregon Governor Kate Brown took the final step to dissolve Cover Oregon by signing legislation transferring control over the exchange from the independent corporation to the Oregon Department of Consumer and Business Services (DCBS).[54]

The evidence obtained by the Committee during the course of the investigation showed that the decision to abandon Oregon's state-supported IT platform in favor of HealthCare.gov came about at the direction of former Governor John A. Kitzhaber, his staff, and his campaign advisors. Kitzhaber and his political operatives privately and improperly influenced, interfered with, and manipulated the work of Cover Oregon to coerce a decision to switch from the state supported IT platform to Healthcare.gov. This conduct was inconsistent with both Oregon law and the governance model adopted by the Cover Oregon Board of Directors, which was intended to be independent and apolitical.

The Committee also found the project suffered from inadequate oversight. Committee investigators were unable to find any evidence of meaningful oversight by CMS in the more than 170,000 pages of documents reviewed during this investigation. CMS failed to ensure that the

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[52] Pettit, May 8, 2014 Cover Oregon Final Report, at 7.
[53] Nick Budnick, *Cover Oregon budget crunch overshadows whether to fix bug-ridden health insurance exchange or go federal*, THE OREGONIAN (April 22, 2014), http://www.oregonlive.com/health/index.ssf/2014/04/cover_oregon_budget_crunch_ove html.
[54] *See* Oregon Senate Bill SB-1, 78th Legislative Assembly, 2015 Session.

project's scope was properly managed given the tight deadlines set by the PPACA. In January 2013, officials from the Center for Consumer Information and Insurance Oversight (CCIIO) indicated in an email that they were extremely impressed by Cover Oregon, but documents show a few months later, in April 2013, the Oregon Health Authority (OHA) and the Oregon Department of Human Services (DHS) discovered they had misallocated about $16 million and subsequently ran out of money earlier than they expected.[55] Moreover, while CMS was congratulating Cover Oregon, the quality assurance vendor for the project, Maximus, was identifying the overall risk level for the project as high.[56]

IV. Cover Oregon's failed launch on October 1, 2013

Documents and communications show that leadership for the Cover Oregon project failed to accept the website might not be ready to launch on October 1, 2013, despite frequent warnings. As early as September 20, 2012, a member of the Oregon House of Representatives, Representative Dennis Richardson, emailed Kitzhaber raising concerns that Cover Oregon was "in substantial jeopardy of being Oregon's next multi-million dollar I.T. project fiasco," and requesting that the "leadership stop treating the [Quality Assurance vendor Maximus] and [the Legislative Fiscal Office] as opponents and comply with their recommendations."[57]

Documents obtained by the Committee show Cover Oregon leadership received warnings in 2012 and 2013, and ignored those warning until August 2013—just months before the launch.[58]

On February 12, 2013, Rocky King, then Executive Director of Cover Oregon, emailed Kitzhaber's staff and stated, "Let's be direct here – this project is full of risk, the time frames are nearly impossible and I'm not sure we can make the time frames as it now stands – our QA just gave a report to us stating they believe the IT side is 2 to 4 months behind."[59]

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[55] Gosia Wozniacka, *How Ambitious Oregon Completely Botched Its Health Insurance Exchange*, BUSINESS INSIDER (Dec. 21, 2013).

[56] Maximus, Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report for January 2013 (Issued February 15, 2013) (GOV_HR00045696); *See also* Maximus, Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report for February 2013 (Issued March 13, 2013) (GOV_HR00045728).

[57] Email from Rep. Richardson to Gov. Kitzhaber (Sept. 20, 2012), http://katubim.s3.amazonaws.com/Richardson%20to%20Kitzhaber.pdf.

[58] First Data noted: "Although there [were] numerous sources of documented communication regarding project status, scope issues, and concerns about system readiness, there [did] not appear to be a formal acceptance by the Cover Oregon leadership of issues significant enough to affect the success of the October 1 launch until August 2013. First Data Report, at 8.

[59] Email from Rocky King to Sean Kolmer, Mike Bonetto, David Barenberg (Feb. 12, 2013) (GOV_HR00017625). Excerpts of emails and documents produced to the Committee are included throughout the report. The complete versions of these emails and documents are available on the Committee's website.

From: KING Rocky [redacted]
Sent: Tuesday, February 12, 2013 10:25 AM
To: KOLMER Sean P * GOV; FAUVER Amy
Cc: David Barenberg; BONETTO Mike * GOV
Subject: RE: Stand-Alone Pediatric Dental Benefit

For background to our 12:30 - you may want to review an email I wrote last night but did not send:

It is after 10 and I'm not supposed to be responding to emails this late, but.....

There **is** clarity on commitment - as I've said to all that will listen and in writing (Gootee, Kotek, Conger, Cummings, Dewey, the board, staff, Barney, Mike, etc) - I will make a decision on the specific time frame after we go live in October. Why? Simple - I don't know if I will need another 3 months, 6 months or 1 year to stabilize the system, de-bug it, and what the scheduled priorities are until we go live. That said, it will be accomplished prior to expanding to larger groups in 2016.

Let's be direct here - this project is full of risk, the time frames are nearly impossible and I'm not sure we can make the time frames as it now stands - our QA just gave a report to us stating they believe the IT side is 2 to 4 months behind (we disagree, but it is not an issue of being behind, just a disagreement on how much) - everyday we are reducing the scope of the project and I'm not about to take 3 weeks of scarce resources to retool/redesign the small group interface and shopping experience prior to going live - finally, I've asked OHA and Oracle to expand resources (people) and to have those resources in Oregon for additional hours (rather than working off site). I have offered our office space to both Oracle and OHA so that they may co-locate (Carolyn said "yes" and Karla is working on space plan - we already have about 50-60 working here with more to come). The point being that we have our backs against the wall as it relates to time and scope and I view part of my responsibility to reduce the noise for the staff - not add to it.

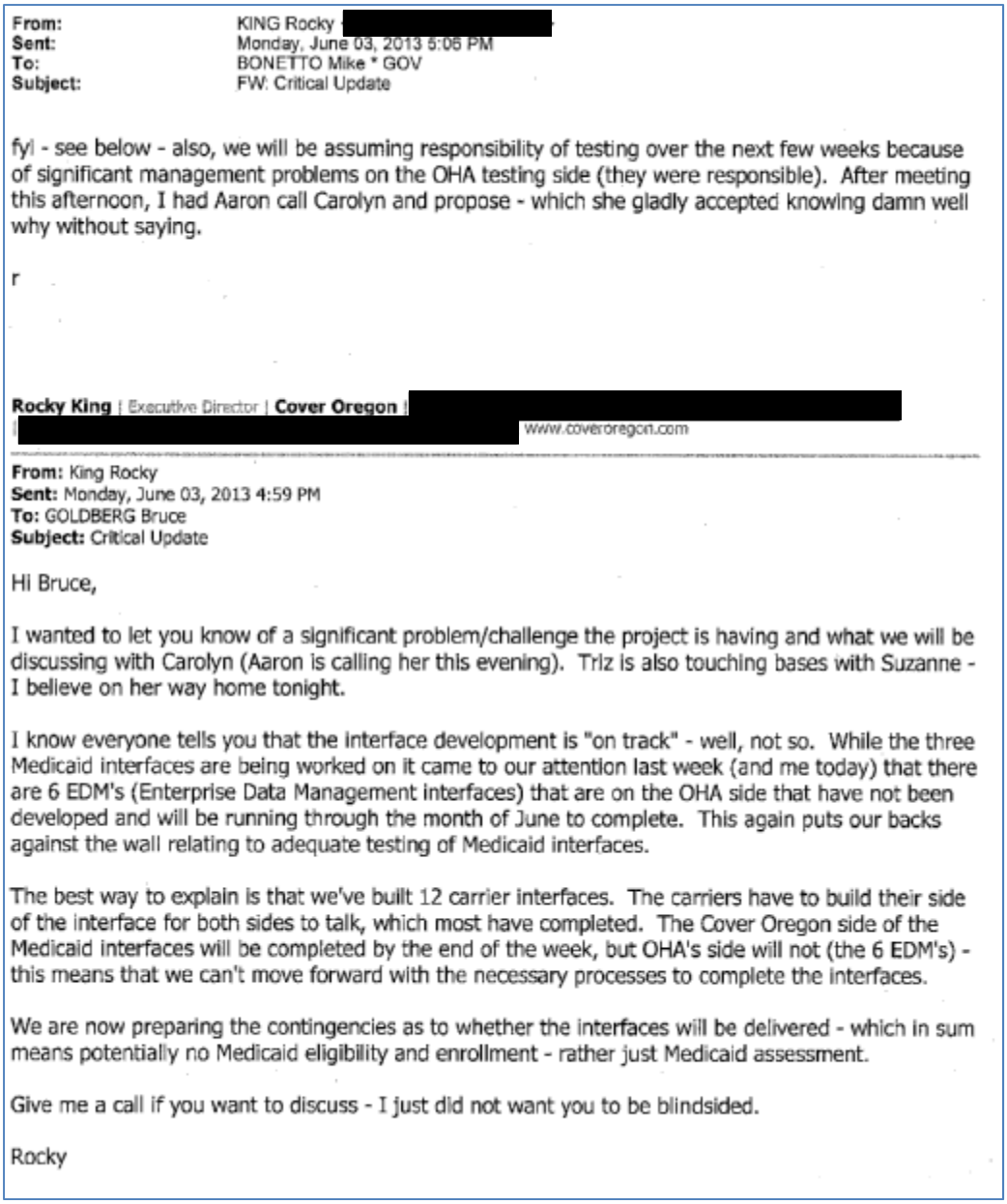
Dewey wants his IT people to meet with and our IT people - that's fine - I'll let Aaron and everyone know about it and they can call and set it up. That said, this is a decision related to risk and and scope - my decision, not the IT staff of either OHA, CO or ODS. I should point out that their IT people and our IT people have been meeting since August of last year, weekly, through December and are now in testing phase.

We are sending some info to our AG for their view from 1,000 feet - we also making a change to our RFA (Dental) that will allow a stand-alone dental benefit that includes pediatric to be offered in the small group market - but, it will result in double coverage (and coordination of benefits) and cost about 1.50-2.00 dollars per month per contract.

* * *

On June 3, 2013, the Governor's office was informed that development of the website was not on track. Rocky King emailed then-OHA Director Bruce Goldberg to notify him that interface development was behind schedule.[60] King forwarded the message to Bonetto, then Kitzhaber's top health care policy advisor and Kitzhaber's future chief of staff, with the comment that Cover Oregon was taking over the testing of website development "because of significant management problems on the OHA testing side."[61]

[60] Email from Rocky King to Mike Bonetto (June 3, 2013) (GOV_HR00018470).
[61] *Id.*



From: KING Rocky [redacted]
Sent: Monday, June 03, 2013 5:06 PM
To: BONETTO Mike * GOV
Subject: FW: Critical Update

fyi - see below - also, we will be assuming responsibility of testing over the next few weeks because of significant management problems on the OHA testing side (they were responsible). After meeting this afternoon, I had Aaron call Carolyn and propose - which she gladly accepted knowing damn well why without saying.

r

Rocky King | Executive Director | **Cover Oregon** | [redacted] www.coveroregon.com

From: King Rocky
Sent: Monday, June 03, 2013 4:59 PM
To: GOLDBERG Bruce
Subject: Critical Update

Hi Bruce,

I wanted to let you know of a significant problem/challenge the project is having and what we will be discussing with Carolyn (Aaron is calling her this evening). Triz is also touching bases with Suzanne - I believe on her way home tonight.

I know everyone tells you that the interface development is "on track" - well, not so. While the three Medicaid interfaces are being worked on it came to our attention last week (and me today) that there are 6 EDM's (Enterprise Data Management interfaces) that are on the OHA side that have not been developed and will be running through the month of June to complete. This again puts our backs against the wall relating to adequate testing of Medicaid interfaces.

The best way to explain is that we've built 12 carrier interfaces. The carriers have to build their side of the interface for both sides to talk, which most have completed. The Cover Oregon side of the Medicaid interfaces will be completed by the end of the week, but OHA's side will not (the 6 EDM's) - this means that we can't move forward with the necessary processes to complete the interfaces.

We are now preparing the contingencies as to whether the interfaces will be delivered - which in sum means potentially no Medicaid eligibility and enrollment - rather just Medicaid assessment.

Give me a call if you want to discuss - I just did not want you to be blindsided.

Rocky

From the initial risk assessment in November 2011, until the monthly quality status report issued less than a month before the anticipated launch date, Maximus raised many red flags for the project and identified a number of high risk areas.[62] Cover Oregon officials, staff members from the Governor's office, and OHA received these reports.[63] Maximus routinely provided

[62] Maximus continued to rate the overall project risk as high. *See, e.g.*, Maximus, Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report, October 2013, at 2 (Nov. 14, 2013) (GOV_HR00082066); Maximus, Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report, at 2 (Feb. 15, 2014) (GOV_HR00045651).

[63] *See, e.g.*, Attachment sent by Laura Hutchings to George Brown, Liz Baxter, Teri Andrews, Alex Pettit, Sean Kolmer, Tina Edlund, Gregory Van Pelt, John Cvetko, Aaron Patnode, Bruce Wilkinson, Chris Blanton, Erick Doolen, John Kenagy, John Cimral, Robin Richardson (Oct. 31, 2012) (GOV_HR00091084); Attachment sent by

charts tracking the project risks. The charts made clear that several categories were "high risk." Those categories were shaded red on the charts.[64] Maximus' Risk Level Tracking chart from August 2013 shows seven high risk categories, all of which had been so coded for at least five consecutive months.

Quality Rating Category	Nov '12	Dec '12	Jan '13	Feb '13	Mar '13	Apr '13	May '13	June '13	July '13	Aug '13
OVERALL HEALTH	H	H	H	H	H	H	H	H	H	H
Business Mission and Goals	M	M	M	M	M	L	L	L	L	L
Roadmap	M	M	M	M	M	M	M	M	M	M
Scope	H	H	H	H	H	H	H	H	H	H
Schedule	H	H	H	H	H	H	H	H	H	H
Budget	M	M	M	M	M	M	M	M	M	M
Funding	M	M	L	L	L	L	L	L	L	L
Board Governance	L	L	L	L	L	L	L	L	L	L
Inter-Org Coordination	H	H	H	H	H	H	H	H	H	H
Organizational Management	L	L	L	L	L	L	L	L	L	L
Human Resources	M	M	M	M	M	M	M	M	M	M
Stakeholder Management	L	L	L	L	L	L	L	L	L	L
Communication	L	L	L	L	L	M	M	M	M	M
Project Management	M	M	M	M	M	H	H	H	H	H
Contract Management	M	M	M	M	M	L	L	L	L	L
Product Content	H	H	H	H	H	H	H	H	H	H
Testing	M	M	M	H	H	H	H	H	H	H

Documents show there were significant concerns about whether the website would be ready by October 1, 2013, and the Governor's staff was fully aware of these concerns. The Governor, however, repeatedly reassured the public that the website would be ready by October 1. Some Cover Oregon officials took notice. For example, on April 7, 2014, Triz delaRosa (then the Chief Operating Officer at Cover Oregon) wrote a letter to the Board of Directors and the Office of the Director of Cover Oregon. The letter stated:

Sean Kolmer to Bruce Goldberg (July 21, 2013) (GOV_HR00094836); Dusty Lane, *Paging Dr. Kitzhaber: What did Gov. know about Cover Oregon collapse?*, KATU.COM (Jan. 30, 2014).

[64] Maximus, Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report, at 4 & 9 (Sept. 13, 2013).

> The Cover Oregon executive team met with Mike Benetto [sic], Sean Kolmar [sic], and others on a monthly basis from June through October 2013 and provided accurate information about the deficiencies in the budget and accurate reports regarding the website development. Despite this knowledge, the Governor's office release [sic] unrealistic public assurances about the viability of the project and the ability of individuals to enroll through the Cover Oregon website.[65]

A similar phenomenon was playing out at CMS with respect to HealthCare.gov. A 2016 report by the Department of Health and Human Services (HHS) Office of Inspector General (OIG), entitled "HealthCare.gov: CMS Management of the Federal Marketplace a Case Study," stated:

> CGI Federal [the vendor hired to build the core of the overall Federal Marketplace system] advised CMS staff numerous times in weekly status reports beginning in February 2012 that delays in finalizing business requirements were affecting the development timeline, yet the changes continued.[66]

After Cover Oregon failed to successfully launch, a number of different independent entities reviewed its development to identify the main factors that contributed to the project's failure. The evaluators included: (1) Maximus; (2) First Data Corporation; and (3) Clyde Hamstreet. The reports found that the problems with the state-based exchange were the result of a number of different factors, including Oregon's overly ambitious scope, risky contracting practices, and dysfunctional management.

A. Overly ambitious project scope

FINDING:	The Cover Oregon project suffered from an overly ambitious scope and risky contracting practices. Most of the contracts awarded by OHA and Cover Oregon specified that contractors were to be paid on a time and materials basis, rather than upon completion of certain deliverables.

Documents and testimony obtained by the Committee show a major reason for the delayed project development was the overly ambitious scope for the healthcare exchange. Rather than build only a state health insurance exchange, Oregon tried to modernize the information technology infrastructure for all of its healthcare programs and create a system that

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[65] Letter from Triz delaRosa to Bruce Goldberg, Office of the Director, Cover Oregon, and Liz Baxter, Chair of Board of Directors (April 7, 2014), http://media.oregonlive.com/health_impact/other/delaRosaclaim.pdf.

[66] During an interview with HHS OIG, one CGI Federal official stated, "We should have been more emphatic in warning CMS of the risks of launching," but "that they did not do so primarily in order to follow the standard 'chain of command' in reporting problems to CMS." United States Department of Health and Human Services, Office of Inspector General, HealthCare.gov: CMS Management of the Federal Marketplace, at 19 (Feb. 2016).

would "seamlessly integrate the commercial health insurance marketplace with Medicaid eligibility and provide one-stop shopping for individuals and small businesses."[67]

Different entities—primarily OHA and Cover Oregon—were responsible for different elements of the project during project development, and the project was "described as a joint project between OHA and the HIX Corporation (Cover Oregon)."[68]

Competing priorities of the different entities involved in the project caused issues with the technology build of the exchange. For example, the documents show that on November 20, 2012, the Chief Information of Cover Oregon, Aaron Karjala, was concerned about the architecture for the technology platform.[69] He expressed concern that architecture being designed by OHA at the time might not ensure that Cover Oregon had sufficient flexibility for an independent path in the future.[70]

One month later, on December 20, 2012, an Enterprise Architecture Director from the primary technology vendor for the project, Oracle, expressed concern that their "architecture [was] going to get blown to bits."[71] In response, the Chief Information Officer of the Oregon Health Authority, Carolyn Lawson, told Aaron Karjala not to engage the Oracle employee and that she would "bring him around."[72]

Documents and testimony show that OHA's and Cover Oregon's competing priorities affected the project scope throughout development. After the responsibilities for building the technology platform were handed over to Cover Oregon in the spring of 2013, the project changed direction.[73] During his transcribed interview, the Chief Information Officer for Oregon, Alex Pettit, testified that the structure of the application (in this case, Oregon's state exchange) often mirrors the organization that is building it. When part of the project was handed over to Cover Oregon, the architecture split into two distinct frameworks. Pettit testified:

> Q. In your review of the Cover Oregon project, did you ever hear about the project changing direction when it was handed over from the Oregon Health Authority to the Cover Oregon Corporation?
>
> A. I understood that -- so the architecture is -- if nothing else, it's reflected in the architecture. They had -- so applications mirrored the organizational structure of the group putting it together. So if you want to change the structure of the application, just change the

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[67] First Data Report, at 7.
[68] *Id.* at 19.
[69] Email from Carolyn Lawson to Aaron Karjala, copying John Cvetko, Jon Lemelin, Karen Edgecomb (Nov. 20, 2012) (GOV_HR00059998).
[70] *Id*.
[71] Email from Carolyn Lawson to Aaron Karjala, copying Carolyn Lawson and Steve Powell (Dec. 20, 2012) (GOV_HR00060018-21).
[72] *Id*.
[73] Email from Carolyn Lawson to Aaron Karjala, copying Carolyn Lawson and Chad Naeger (Oct. 25, 2013) (GOV_HR00062018-20).

structure of the organization and then the application will follow.

The application is actually there to support the organization, not the other way around. When Cover Oregon divided from OHA, their architecture was -- the architectures were split into two distinct frameworks, and one began development in one direction to mirror the organizational structure of Cover Oregon.

The other one continued along the development path it had been on, mirroring the organizational structure of OHA and DHS.

Does that answer your question?

Q. It does. Did the two entities have very different organizational structures?

A. They did, yes, ma'am. They did.

Q. Okay. The one that went on to Cover Oregon, then was it changed more because of the organizational structure that had started at OHA?

A. It was narrowed and it had -- and it changed. The focus or the priority changed for it, which brought about a lot of problems or issues with change control and version management and feature and functionality definitions and scope and all sorts of things after that.[74]

Because the aggressive timeline set by the PPACA required an operational exchange by October 1, 2013, Oregon should have clearly defined a reasonable project scope during the early stages of the project to ensure a successful launch on October 1, 2013.[75] According to the 2014 First Data Report on Cover Oregon:

> [A] number of project documents were generated in 2011 and 2012 that were intended to define in more detail the scope of the Exchange, but none of the documents written by OHA or Cover Oregon appear to have been adopted as a universally agreed upon scope definition. The ambitious nature of the scope did not change, however, and the Exchange and Modernization projects were merged to form the MaX project. This created a project that Rocky King [Cover Oregon's former-Executive Director] described as having the most robust scope of any exchange. . . . The significant breadth of functional scope defined within the MaX

[74] Pettit, Tr. at 31-32.

[75] Maximus, Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report, at 4 (Feb. 15, 2013) (GOV_HR00045693-727).

> project was clearly at a size and scale that challenged the project team's management capabilities.[76]

The risk associated with the ambitious nature of the scope continued throughout project development. Meeting notes from March 2014 show the Technology Advisory Committee convened to explore the different technology options for Cover Oregon discussed:

> Based on historical structure (CO linked to OHA), there is not a good mechanism for saying 'no' to scope changes. It has been hard for CO to make decisions that could be detrimental to OHA. Will need one person going forward who has authority and accountability to say 'no.'[77]

The March 18, 2014 meeting notes from Cover Oregon's Technology Options Workgroup stated the "Key to success is defining minimum acceptable scope, but this has not been done to date . . . how will this be done going forward and who would do it?"[78]

Documents show the leadership at Cover Oregon and OHA were frequently warned of the risks associated with failing to clearly define the project scope. Maximus repeatedly warned Cover Oregon about the risks associated with failing to identify a project scope and failing to provide clear direction and requirements for the transformational vision.[79] Although leadership was aware that the undefined project scope was hindering the ability of the project to successfully move forward, they continued to fail to provide clear guidance for the project. Documents obtained by the Committee show the vendors helping build the state-supported IT platform worked on a number of iterations of the project without any real project direction. For example, Bob Cummings, from the Legislative Fiscal Office, emailed King in July 2012 and described the need for "an overall plan." He stated:

> Being on iteration 10 (the first 7 were building the factory and no real development was being done), doesn't mean anything if you don't have an overall plan for all the iterations (from problem definition to final product). . . . You must have planning and definition (at some level) before you charge off building. DHS has recent examples where they ignored these basic rules (at some level) and the results were not good (in fact, the results were the front page of the Oregonian).[80]

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[76] First Data Report, at 7.
[77] Tech Review Committee Meeting Notes (March 20, 2014) (GOV_HR00087485).
[78] Attachment to Email from Laura Hutchings to Galen Gamble, Sean Kolmer (March 20, 2014) (GOV_HR00079804- 847).
[79] Maximus, Oregon HIX-IT Initial Risk Assessment Report, at 3 (Nov. 3, 2011); Maximus, Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report, at 25 (Feb. 15, 2013) (GOV_HR00045693-727); Maximus, QA Status and Improvement Report HIX-IT, at 6 (March 27, 2013). Maximus, QA Status and Improvement Report HIX-IT, at 6 (March 27, 2013).
[80] Email from Bob Cummings to Rocky King (July 10, 2012), http://katubim.s3.amazonaws.com/071012-Serious%20Concerns.pdf.

The lack of a coherent plan proved to be problematic given that, departing from contracting best practices, most of the contracts entered into by both OHA and Cover Oregon with Oracle specified that services were to be paid on a time and materials basis rather than upon completion of certain deliverables.[81] First Data stated that this approach "put the state in the position of having to pay for work that did not always result in the anticipated deliverables or that required more hours (and higher cost) than planned."[82]

Information obtained by the Committee shows Cover Oregon entered into several time and materials contracts with different vendors. For example, Cover Oregon's contract with TahoeBlu, Inc. for "IT Architect Services" was a time and materials contract. Likewise, the contract with Tornai Consulting, Inc. for system architecture was a time and materials contract.[83] During his interview, Pettit testified that time and materials contracts are used in the IT contracting world because many systems are custom built (like Cover Oregon), so there is a higher degree of risk, which the contractee must assume. Pettit testified:[84]

> Q. And what are time and materials contracts?
>
> A. Well, they are, in sum, that there's no obligation for delivery. It's exclusively around that you're just there to get paid for whatever they tell you to do.
>
> Prior to that, that was not the case. After those zero dollar change orders, then that was the case.
>
> Q. Do you know why they were used so much during the Cover Oregon project?
>
> A. I'm sorry?
>
> Q. Do you know why –
>
> A. The time and material?
>
> Q. -- the time and materials contracts were used?
>
> A. I did not know why. It would not have been how I would have taken it.
>
> Q. And who typically assumes most of the risk in a material time and

[81] First Data Report, at 4 & 36.
[82] *Id*. at 6.
[83] Attachment 1 to May 15, 2014 Letter to the Honorable Darrell Issa, Chairman, Committee on Oversight and Government Reform, The Honorable Jim Jordan, Chairman, Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs, and the Honorable James Lankford, Chairman, Subcommittee on Energy Policy, Health Care, and Entitlements, from Liani Reeves, General Counsel, Office of the Governor (May 15, 2014).
[84] Pettit, Tr. at 28-31.

materials contract?

A. The one issuing the contract, of course.

Q. And do you see these type of contracts a lot in IT contracting work?

A. We see them. So the state of -- I'm going to opine here for just a minute. The state of IT today in 2016 is still a custom-build type world. We still make to order applications and programs and what have you and weave things together, much like in manufacturing to 1784. They used to make firearms, you know.

So it's all custom made. There's no -- there's very few interchangeable parts. There's very few -- so as a consequence, everything is a one-off, and a lot of times, there's a great deal of risk associated with that, and so yes.

You will see a time and materials contract taken on because of the great risk, and so the one issuing the contract will take on that risk. We'll say, Yes, we understand this is custom, this is new, this is whatever. So we're willing to assume that risk.

The things you generally do not see are where the architecture is defined by the one who's being brought in as the time and materials. Usually, the ownership of the design belongs to whoever is given the contract.

In other words, if I'm going to hire people to work on a design of mine that I've made up, then I own the design. That was not the case here. The design was not owned by Oregon either. They did not author the design. The architecture was not theirs.

So it was a -- it was very unusual to be in that situation, to see that kind of a construct where the vendor defined the architecture and then the vendor was doing a time and materials implementation of that architecture. That's not anything I had ever seen before.

FINDING: CMS failed to ensure that Cover Oregon and the Oregon Health Authority adopted a realistic project scope.

In a deposition, Dr. Bruce Goldberg testified that CMS never raised the ambitious scope of the project as a possible issue. He testified:

Q. Was there ever any concern that you had tried to accomplish too

much given the tight deadlines established by the Patient Protection and Affordable Care Act?

A. You know, I think that in -- certainly in retrospect the state sought to accomplish a couple of things to combine the Medicaid enrollment with the private insurance market enrollment and also do the small business insurance exchange. I think that was an ambitious goal. And, you know, certainly now in retrospect, having not achieved the ability of the website to even enroll in the individual market, it's hard to not look back and say that that was an ambitious goal and that -- you know, I don't know that anyone knows if we had had a different goal, whether it would have ended any differently, but it's certainly a fair comment to make.

Q. Did CMS ever raise any concerns about your ambitious goal?

A. Not to my knowledge. I mean, I -- I -- I was aware that we had, you know, multiple gate reviews and interactions with CMS. I was never aware of that being raised as an issue.[85]

B. Dysfunctional management and a focus on public perception of the website rather than functionality

Documents and testimony show that ineffective management at Cover Oregon undermined the launch of the exchange. Clyde Hamstreet, the interim Executive Director of Cover Oregon from April 2014 to June 2014, stated:

> Rarely if ever in my experience as a turnaround professional have I encountered so dysfunctional a leadership and management situation. Several executives and managers held positions they did not have the experience or ability to handle and were consequently failing. There was little accountability among management. High level objectives were not aligned and executives were frequently at odds with one another, at times displaying unprofessional conduct such as territorial behavior, open hostility, and use of strong profanities in verbal communications.[86]

In Hamstreet's final presentation, he included a slide summarizing the dysfunctional management at Cover Oregon. The slide identified nine factors, including "lack of experience or ability" and "unprofessional conduct."

[85] Goldberg, Tr. at 25.
[86] Hamstreet & Associates, Overview of Hamstreet Cover Oregon engagement and recommendations, at 1 (GOV_HR00027206-17).

Cover Oregon had four different Executive Directors in four years.[87] Similarly, First Data reported:

> The exchange project filled many of its staffing needs using temporary positions, which are difficult to fill due to their lack of employment security. Additionally qualified staff hired into temporary positions are likely to continue to search for alternate permanent state positions. Consequently, the exchange project regularly struggled to sustain the anticipated project team size and skills.[88]

Key decision makers often failed to engage in good business practices. According to First Data, decisions about the exchange were not properly tracked or documented.[89]

Two months before the launch of the exchange Cover Oregon's focus was on improving the public's perception rather than fixing difficult technical challenges and prioritizing functionality. On September 8, 2013, then-Executive Director of Cover Oregon, Rocky King, told Oracle to focus on the "little things."[90] Rocky King made several recommendations to Oracle Director Laura Bernier related to prioritizing appearance over functionality. King's recommendations included:[91]

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[87] *See* Nick Budnick, *New Cover Oregon executive director Aaron Patnode will make $215,000 a year*, THE OREGONIAN (July 9, 2014).
[88] First Data Report, at 11.
[89] *Id.* at 3.
[90] Email from Rocky King to Laura Bernier (Sept. 18, 2013) (GOV_HR00115245); Email from Rocky King to Michael Bonetto (Sept. 18, 2013) (GOV_HR00018622).
[91] *Id.*

- Focus on packaging first, “a good looking bottle gets people to buy and most people don’t really know if the wine is good or bad.”
- “[S]ell the sizzle – damn the taste!”
- “We just need to make sure the prom date looks good when they are picked up.”
- “This has little to do with functionality but a lot to do with perception.”
- “[I]f the road is going to be bumpy, let me at least be driving a good looking car.”

On 9/18/2013 4:06 AM, King Rocky wrote:

Hi Laura,

While going through the portal last night, I was drawn to a number of problems that I believe will impact how agents and community partners react to our site. First, it should be fair to say that I'm drawing some of my thoughts from the biography of Steve Jobs and the relentless pursuit of perfection that he had. His focus was always on the customer and the customer experience (he didn't listen to them via focus groups or run throughs, but everything he did was to enhance their experience).

I grew up in the food industry and in the California wine country – first jobs – picking grapes and working in restaurants. The winery's always focused on packaging first – a good looking bottle gets people to buy and most people don't really know if the wine is good or bad (there are more snobs today but it is still amazing how a 10 dollar bottle of wine with a great package will sell over

something more expensive, great taste but with mundane packaging. In the restaurant business (my father opened Wimpy's Hamburger Restaurant in 1933!) I was always told to sell the sizzle – damn the taste! The point being what people see is what creates the lasting impression (minus those who get food poisoning).

So what I'm going to suggest may be off base and not possible given time and resources – I'll let you and Aaron decide whether you can pull it off.

So - Is it possible to secure (additional if necessary) one or two or ? developers just be devoted, page by page, to go through and "clean up" all of those little irritating issues that the customer (CPA's initially) will see right off the bat – make their first impression – that regardless of how the system works will be forever how they view the site – will it be professional in it's appearance and not work quite right, which we can explain, or will it look unprofessional, with a lot of little things wrong, and not work quite right and again, which we can explain. This does include the 100's of things that will not be necessary to go live – the 2's and 3's – but it does include 100's of things that we (Cover Oregon and Oracle) will be judged by.

I know many of the problems identified during the last two run-throughs are corrected in other environments (dev vs production, etc.) and it is a priority on your part in get all of these in sync over the next few days. That by itself will solve some of the "experience and visual" problems. Beyond that, we just need to make sure the prom date looks good when they are picked up – sell the sizzle – the packaging – while focusing on the functionality of the major problems with the vast majority of resources you have.

It is easy to say that "we need to focus only on those things that will let us go live Oct 1st". I agree but only to a point. We do not want to be dismissed before we even begin with a myriad of spelling, wrong labels, field sizes not right, drab pages, links that don't work, etc. We will all look dumb and it will come across as a amateur site. This has little to do with functionality but a lot to do with perception. I know the argument – if we were to do this, what would you give up – my response is don't give up anything, just figure out how Oracle can put the additional resources in to do it.

Probably everyone will disagree with me – my staff, yours, consultants – actually I know they would disagree with me - but step back and have a discussion with Aaron. Take a customer perspective rather than an IT perspective. Again, I do not want to detract from the priority 1's that must be done to go live 10/1 but damn, if the road is going be be bumpy, let me at least be driving a good looking car.

Can Andy from Deloitte help – and I care nothing about ego's at this point. He's not a developer but perhaps he could just go through the site with you and maybe help better bridge their work with yours – just one (not a room full of them) program staff person sitting with who ever you think from your team could drive this. Kelly Harms (my staff) is a great one just to look and point out the small stuff – from a customer view point. We have lists of issues already detailed out. I don't know – just looking for some ideas that will get us to a point where 1,500 agents and 1,300 community parters say "hey, a lot of bugs their working on, but it sure looks good". Not sure we can say that yet.

No need to get back to me – this is just a lone voice up late at night – discuss with Aaron, Chad, Brian, whomever – and just work hard to get this right and ready to go in 13 days.

Thanks,

Rocky

Cover Oregon's leadership was aware that the website was not ready to launch on October 1, 2013. The Oregon Legislative Fiscal Office, however, felt federal and executive branch pressure to launch the website anyways. As early as May 2013, a legislative oversight analyst in Oregon stated:

> [T]here appears to be a political need for CO management to implicitly stick with the 'party line' that Oct 1 is somehow unmovable, that there would be embarrassment or disappointment of important stakeholders (Governor, Obama administration, the public, …) if the dates slip. I think this sort of politically driven denial (as you call it) or intellectual dishonesty (as I call it) is not in the best interest of the State or its citizens, because it robs from the kind of laser focus required in setting up a successful startup that is CO."[92]

[92] Email from Ying Kwong to Bob Cummings (May 20, 2013), *available at* http://katubim.s3.amazonaws.com/Kwong%20to%20Cummings%201.pdf.

In August 2013, an analyst from the Legislative Fiscal Office, Bob Cummings, identified "federal and executive branch pressure" as a driving force behind the decision to launch the website despite its flaws. Cummings wrote:

> Dr. Ying Kwong, from DAS [Department of Administrative Services] oversight and I met with Cover Oregon last week. We were totally surprised to find that they had already made a decision 7-10 days before (and communicated it to their board and sent out a press release) that they were going live on October 1, 2013 and that 'all business services and functions would be available.' . . . This decision to 'go-live' was not made in the manner that CO had told us that they would make it, and I don't think that the process for making it was well thought out, or super objective in nature. . . . I believe that CO was 'forced' to go live due to federal and executive branch pressure.[93]
>
> * * *
>
> Unfortunately, I, DAS, and the QA [Quality Assurance vendor] have been telling them that they are probably 3-5 months behind where they need to be to go live on October 1, 2013. The events of this past month clearly tell me that our estimates were correct. It's very difficult to get 36-48 months worth of work done in the 27 months that CO has been given. There is a reason why other early adopters dropped out of building their own system, and why 35 states have chosen to go with the very limited exchange system that the feds are supposedly building.[94]

C. Inadequate oversight of the project

FINDING:	The Cover Oregon project suffered from bad governance. Even though there were a number of entities involved in project development, there was no single point of authority overseeing its development. These disparate entities did not always function as a cohesive unit.

An overly ambitious project scope and technically inexperienced (and constantly changing) leadership caused challenges for Cover Oregon. Those challenges were compounded by Oregon's ambitious health care initiative, which was the source of discord among the various state agencies and organizations developing the exchange, especially the Oregon Health Authority and Cover Oregon. Even though there were a number of entities involved in project

[93] Email from Bob Cummings to Rep. Richardson (Aug. 21, 2013), *available at* http://katubim.s3.amazonaws.com/082313-RE_%2016.2M%20Shortfall%20In%20Cover%20Oregon.pdf.
[94] *Id.*

development,[95] there was no single point of authority overseeing its development.[96] CMS failed to adequately monitor and oversee project performance. First Data concluded:

> A common theme from the assessment interviews was that the entities involved (Cover Oregon, OHA, and DHS) had different, and sometimes competing, priorities. As a result, these disparate entities did not always function as a cohesive unit.
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> * * *
>
> It is clear that communication across agencies was ineffective and at times contentious. The lack of a single point of authority slowed down the decision making process and contributed to inconsistent communication, and collaboration across agencies was limited at best.
>
> * * *
>
> Authority was not only parceled out to multiple committees, but was also fragmented across Cover Oregon, OHA, and DHS. To complicate things further, all of these entities were making different decisions for the same project.
>
> * * *
>
> Organizational conflict between OHA and Cover Oregon, especially at the leadership level, was highlighted often. An e-mail exchange between Rocky King and Carolyn Lawson from June 12-13, 2012, clearly illustrates that the two leaders were not effectively leading the two teams collaboratively. Statements in the e-mails characterized the interactions as 'lobbing rocks over the fence in a defensive, accusatory and inaccurate way' and 'This is not good communication and certainly continues to create an environment based on distrust and misinformation.' In the interview with Rocky King, he stated, 'The relationship did not develop between OHA and Cover Oregon – no transparency.'

During a deposition, Committee staff asked Dr. Bruce Goldberg, the former Director of the Oregon Health Authority and interim Executive Director of Cover Oregon, whether he was aware of any distrust between OHA and Cover Oregon during project development. Dr. Goldberg testified that there "certainly were some issues." He stated:

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[95] Some of the entities overseeing the development of the exchange included: Cover Oregon; the Oregon Health Authority (OHA); the Oregon Department of Human Services (DHS); the Cover Oregon Board of Directors; Department of Administrative Services (DAS); Legislative Fiscal Office (LFO); the Oregon Legislature; and the Centers for Medicare and Medicaid Services (CMS). First Data Report, at 2 & 21.

[96] *Id*. at 2 & 19.

Q. Did you ever hear of any distrust between OHA and Cover Oregon?

A. There are certainly -- yes, I did hear of that. And there certainly were some issues between the two agencies in terms of -- I don't know that I would -- from my vantage point, I don't know that I would call it trust. I had heard that. I think this was a –

Q. Who had you heard that from?

A. I heard all sorts of rumors, from all sorts of people, and I don't recall what individuals, but, you know, I heard that. And, I guess, I would characterize it as follows: This was a pretty -- this was a complex project, highly visible, tight, tight deadlines, criteria that had -- we were designing a website for criteria that had yet to be developed. So it was a high-stakes project. The state -- the Oregon Health Authority -- I can speak louder. The Oregon Health Authority was responsible for a period for doing a lot of the building of the technology and the -- Cover Oregon was responsible for setting up the business processes for what that technology would get built to do. And I there was tension around that. You know, there were times that I -- the health authority was putting a lot of pressure on Cover Oregon to come up with business processes. I think Cover Oregon was feeling pressured that it didn't have all the information that it needed to do that, so it was a stressful environment. I think that there were some issues of -- there was a lot of stress between the two agencies. And a lot of that was, you know, played out particularly between the chief information officer for the Oregon Health Authority and the director of Cover Oregon, who I'm sure you've seen it, I have seen it, because I lived through it. They had a lot of e-mails back and forth to each other trying to get information and do a lot of things and I often found myself mediating between to two.

Q. Then was OHA responsible for designing the architecture of the technology system?

A. Designing -- I just want to be -- I'm not trying to be difficult. All of this -- when we get into -- I'm not a technology guy and –

Q. If you can elaborate on the comment you made about OHA being responsible for building -- you said Cover Oregon was more operations focused.

A. Yeah. So, I guess, I'd characterize it like this, you know, the Oregon Health Authority had the contract with Oracle and oversaw

the contract with Oracle. Oracle was responsible for the coding and the putting together the technology and -- for the beginning of the project, that then switched over to Cover Oregon later. But the Cover Oregon was responsible for telling the builders what it is they needed. So they needed the website to, most simply, have a place for someone to enter their name, birthday and income. They wanted it to be able to, you know, choose health plans and to give people a variety. You know, they told them all of the things that they needed it to do. And then Cover Oregon --

I mean, then the health authority had the contract with Oracle and Oracle were the ones to, you know, put the hammer to the nails, as I would sort of put it, to build to code to have it do that.

Q. So was there a point that the Oregon Health Authority was projected to hand the project over to Cover Oregon?

A. Yes.

Q. What was that date?

A. I don't recall the date. What I do recall is that we handed it over earlier.

Q. Do you know why you handed it over earlier?

A. Yes. For a couple of reasons. You know, I -- I had suggested handing it over even earlier than it was, primarily because of the relationship that I just talked about. I felt that it actually would have been more functional to have more –

You know, this all started -- the Oregon Health Authority was involved in it in the beginning because there was no Cover Oregon. And then there was a Cover Oregon and as Cover Oregon became a mature organization, it made sense to have them both creating the business processes and responsible for overseeing the building of that. So it -- it made sense to me to let them to that sooner. That's where a lot of the tension was around that, so it made a lot of sense to do that.[97]

The lack of cohesiveness and collaboration made state oversight of the project more difficult. In February 2013, Bob Cummings, an analyst from Oregon's Legislative Fiscal Office, emailed Julie Pearson, a Chief Information Officer (CIO) for Oregon, to schedule a meeting about project

[97] Goldberg, Tr. at 19-22.

concerns related to transparency, quality assessment, and trust among co-workers.[98] When discussing who should attend the meeting, Cummings wrote to Pearson about tension between staff from Cover Oregon and Maximus. He wrote:

> Your call, however, Carolyn [Lawson from OHA] strongly feels that CoverOregon and Maximus are ganging up on her and her team, and CoverOregon is telling Maximus that Carolyn and her team are not being transparent (and this is showing up in the QA reports). . . . It's been my experience that we're better off to simply get all the issues out on the table and deal with them versus trying to fixing it with multiple 'problem solving sessions.'[99]

According to a 2014 news article, this February 2013 meeting was "so intense that one source said Lawson – the woman in charge of building the website – cried through most of it,"[100] and draft meeting notes obtained by the Committee showed OHA and Cover Oregon leadership identified significant challenges regarding project management and agency coordination. The notes stated:[101]

> DHS/OHA feels that it is being asked to do things related to the hiring of a QC and IV&V vendor that, while legal from a State of Oregon perspective, may not be legal according to federal laws, rules, and regulations.
>
> * * *
>
> The reporting structure of Maximus in both CoverOregon and DHS/OHA IT Project is too low. Maximus is overseeing the individuals who must review and approve their findings and payment.
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> * * *
>
> Both Maximus and Cover Oregon feel that the DHS/OHA team is not as open and transparent as to what it is doing as it should be.
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> * * *
>
> There is clear evidence that there is also a level of distrust between DHS/OHA and CoverOregon related to a wide variety of issues (i.e. openness and transparency, teamwork, lack of common success goals, etc.).

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[98] Dusty Lane, *Cover Oregon Collapse: The Mystery of the Missing Audit*, KATU.COM (Feb. 13, 2014).
[99] Email from Bob Cummings to Julie Pearson (Feb. 12, 2013), *available at* http://katubim.s3.amazonaws.com/021213-Meeting%20Planning%20-%20Julie-Bob.pdf.
[100] Dusty Lane, *Cover Oregon Collapse: The Mystery of the Missing Audit*, KATU.COM (Feb. 13, 2014).
[101] HIX Program Issues Matrix attached to email sent from Julie Pearson to Alex Pettit and Matthew Shelby (Feb. 21, 2013) (GOV_HR000104670-673).

* * *

> Maximus has reported that DHS/OHA's decision to act as the 'systems integrator' for the HIX IT Project is not what is typically done. They have reported major concerns on the effectively [sic] of this approach and the difficulty in provide [sic] QA/QC services in this type of environment.[102]

FINDING:	The Cover Oregon project suffered because Oregon decided to serve as its own systems integrator.

There were also concerns about Oregon's decision to serve as its own systems integrator.[103] In an August 2012 email, Carolyn Lawson stated it was the state's decision to serve as its own systems integrator, specifically noting "Oregon is acting as our own Systems Integrator, meaning we are not hiring a vendor to do the work for us."[104] Goldberg testified:[105]

> Q. Can you describe what a systems integrator is?
>
> A. To the best of my knowledge, again, I'm not a technology person, you know, a systems integrator has been described to me as kind of like a general contractor that helps to oversee a large project and make certain that it's coordinated and working.
>
> Q. Who was the systems integrator for the project?
>
> A. We did not have a systems integrator.
>
> Q. So was the state the systems integrator?
>
> A. Yes. The state of Oregon functioned, in essence, as the systems integrator. We made a decision to not hire a systems integrator.

Documents and testimony show Cover Oregon's failed launch was caused in part by the decision not to hire a system integrator.[106] In an Initial Risk Assessment Report, Maximus commented on Cover Oregon's decision not to use a system integrator, noting the "approach will

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[102] *Id*.
[103] Email from Carolyn Lawson to Tracey J. Humphreys (Aug. 18, 2012) (Oracle_HOGR_00002751-4).
[104] Email from Carolyn Lawson to Rose Hughes (Oct. 15, 2012) (Oracle_HOGR_00002750).
[105] Goldberg, Tr. at 23.
[106] CMS documented this decision in its February 2014 Technical Assistance Report, noting that: "Oregon chose to act as its own system integrator and partnered with Oracle to develop their solution in June 2011."CMS, Technical Assistance Report For: Oregon Health Insurance Marketplace, at 3 (Feb. 27, 2014) (COVEROR 000041-000065). During his transcribed interview, Alex Pettit indicated he believed Oracle was performing many of the responsibilities that would have been performed by a systems integrator. Pettit, Tr. at 18-22.

require the State to act as the prime contractor and assume more of the overall project risk."[107] Oregon's failure to use a system integrator ultimately "created a lack of accountability on the project" and "contributed to a lack of scope control, a delay in requirements definition, and unrealistic delivery expectations," according to First Data.[108]

In fact, Oregon's decision to act as its own system integrator is a mistake that was also made by the federal government for HealthCare.gov. A January 2015 report by HHS's Office of Inspector General (OIG) on HealthCare.gov identified CMS's failure to identify a lead system integrator as one of the causes for HealthCare.gov's troubled launch.[109] The OIG found that, because there was not a system integrator for the project, "there was no single point-of-contact with responsibility for integrating contractors' efforts and communicating the common project goal to all 33 companies."[110] In a February 2016 report on HealthCare.gov, the OIG wrote:

> CGI Federal managers reported that the lack of a true systems integrator created extra work that was outside the scope of their contract. For example, CGI Federal reported having to assist CMS with defining the business requirements to mitigate problems with interdependency of various Federal Marketplace computer systems and avoid losing more time for system development and testing.[111]

D. Bad budgeting

FINDING:	The Cover Oregon project ran out of early innovator grant funds earlier than expected.

The discord between Cover Oregon and OHA was heightened when OHA exhausted the early innovator grant funds earlier than expected.[112] As previously mentioned, Section 1311 of the PPACA provided funding assistance for planning, establishing, and early operation of the exchanges and HHS awarded three different types of cooperative agreements[113] to support the planning and establishment of exchanges (exchange planning grants, exchange establishment grants, and early innovator grants).[114] Cooperative agreements are very similar to grants, with the key difference being that "the federal agency providing the assistance has more involvement with the recipient in carrying out the activity being funded under a cooperative agreement than it

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[107] First Data Report, at 6.
[108] *Id*.
[109] U.S. Department of Health and Human Services, Office of Inspector General, Federal Marketplace: Inadequacies in Contract Planning and Procurement, OEI-03-14-00230, at 12 (Jan. 2015).
[110] *Id*.
[111] United States Department of Health and Human Services, Office of Inspector General, HealthCare.gov: CMS Management of the Federal Marketplace (Feb. 2016).
[112] Email from Rocky King to Cover Oregon Board Members (May 1, 2013) (GOV_HR00018536-40).
[113] *See* HHS, *Grants Policy Statement*, at ii (Jan. 1, 2007).
[114] *See*, *e.g.*, CCIIO, Cooperative Agreements to Support Innovative Exchange Information Technology Systems (Oct. 29, 2010); CCIIO, State Planning and Establishment Grants for the Affordable Care Act's Exchanges, Funding Opportunity, IE-HBE-10-001 (July 29, 2010); CCIIO, Cooperative Agreements to Support Establishment of State-Operated Health Insurance Exchanges,: IE-HBE-11-004 (Nov. 29, 2011); CCIIO, Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchanges,: IE-HBE-12-001 (Dec. 6, 2013).

does in the case of a grant."[115] Throughout this report these terms are used interchangeably to describe the federal assistance provided by HHS to build and develop the health insurance exchange.

The planning grants were awarded to help states with their initial planning activities for the exchanges. HHS also provided two-year early innovator grants to a select number of states that demonstrated leadership in establishing an exchange, so these select states could develop sophisticated IT platforms and best practices. As states continued to develop exchanges, HHS awarded two levels of establishment grants. Level one establishment grants supported states' continued progress in developing and establishing a state-based or federally facilitated exchange, and states could apply for additional years of level one funding. Level two establishment grants were designed to provide funding through December 31, 2014 to states that met specific milestones in establishing their exchange and were establishing a state-based exchange.[116] Oregon received five grants, for a total of $304,963,587.

Grant Name	Administrator	Amount
Establishment Grant Level Two	Oregon Health Insurance Exchange Corp.	• $226,442,074 (awarded Jan. 17, 2013)
Establishment Grant Level One	Oregon Health Insurance Exchange Corp.	• $8,969,600 (awarded Aug. 12, 2011) • $6,682,701 (awarded May16, 2012) • Administrative Supplement Award: $2,195,000 (awarded Sept. 27, 2012)
Early Innovator Grant	Oregon Health Authority	• $48,096,307 (awarded Feb. 16, 2011) • Administrative Supplement Award Amount: $11,820,905 (awarded Jan. 17, 2013)
State Planning Grant	Office for Oregon Health Policy and Research	• $1,000,000 (awarded Sept. 30, 2010)

CMS considered Oregon to be one of the most successful states in planning and establishing the state-based exchange, and in 2013, according to Rocky King, CCIIO was

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[115] *See* 31 U.S.C. § 6305; U.S. Gov. Accountability Office, Office of the General Counsel, Principles of Federal Appropriations Law, Chapter 10 Federal Assistance: Grants and Cooperative Agreements, Third Edition, Volume II, Page 10-5 (Feb. 2006).

[116] *See* CCIIO, State Planning and Establishment Grants for the Affordable Care Act's Exchanges, Funding Opportunity IE-HBE-10-001 (July 29, 2010); *See also* CMS, *FAQs on the Clarification of the Use of 1311 Funds for Establishment Activities* (June 8, 2015), *available at* https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/FINAL-1311-FAQ-06-08-15.pdf.

providing the exchange with "more dollars (on a per capita basis) than many other states" because they "believe[d] the investment [was] worth it."[117] Documents obtained by the Committee show, however, that a few months later, in April 2013, OHA and DHS discovered that they had misallocated about $16 million and therefore ran out of funds earlier than expected.[118] As a result, OHA had to hand the project over to Cover Oregon earlier than expected and Cover Oregon contracted with Oracle two months earlier than planned. Members of the Cover Oregon Board of Directors had only two days to review the contract between Cover Oregon and Oracle.[119]

From: Harms Kelly [redacted]
Sent: Wednesday, May 01, 2013 2:25 PM
To: Liz Baxter; Aelea Christofferson; GOLDBERG Bruce; MYERS Brenda M; SAVAGE Louis D; King Rocky; Morawski Lisa; Harms Kelly; BORDEN Richelle; Stephanie Swan; Peacock, Bev : CO Admin; José Gonzalez; Ken Allen; Teri Andrews; Brown, George J. :President & CEO; Gretchen Peterson; Fauver Amy; Hutchings Laura; David Barenberg; Bianco, Diana; Jovick, Tom; Karjala Aaron
Cc: delaRosa Triz
Subject: COVER OREGON: Oracle Contract Review
Importance: High

Dear Board Members,

Per Board By-Laws, we are requesting your review of a purchase order/contract for the purchase of (1) Business Applications and associated licensing costs in the amount of $1.8 million for the first year and (2) a purchase order/contract for the development services in the amount of $45.3 million to finalize version 1 of the exchange and to manage the technology environments through December 2014 (18 months). To date, Cover Oregon has issued order documents to purchase hardware, systems software and managed cloud services for transitioning the technology environments and management from the Oregon Health Authority (OHA) to Cover Oregon. These are the two final order documents which must be negotiated to finalize the transition. Some additional information below will provide more context:

Assumption of Technology, Fiscal and Management Oversight of IT Project. The Oregon Health Authority notified Cover Oregon in this last month that they will have exhausted the original innovator grant as of May 1st. While Cover Oregon had been negotiating the contract with Oracle for the last several months, including outside oversight of the terms and conditions, we did not believe finalization would need to occur until June 1st (with contract start date as of July 1st, assumed in the Level 2 Grant request). As such, we have had to move up the starting date for the assumption of fiscal responsibility for the IT component earlier than planned. Since OHA has no money to pay IT related costs as of today, we need to move forward with the contact with Oracle this week. Oracle and other vendors are working on an "at risk" basis until signed, something neither they or us want to extend into next week.

* * *

We are asking that you review the contracts and provide any feedback you might have to Triz delaRosa (cc'd on this email) by Friday, May 3. We would also be happy to schedule a call with anyone having specific questions or needing further discussion.

Members of the Board of Directors were concerned by the short timeframe to review the contract. One board member, George Brown, wrote:[120]

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[117] Email from Rocky King to Mike Bonetto, Sean Kolmer, Bruce Goldberg, Louis Savage, and Barney Speight, (Jan. 13, 2013) (GOV_HR00013743-45).
[118] Gosia Wozniacka, *How Ambitious Oregon Completely Botched Its Health Insurance Exchange*, BUSINESS INSIDER (Dec. 21, 2013).
[119] Email from Rocky King to Sean Kolmer, Mike Bonetto (May 4, 2013) (GOV_HR00018536-40).
[120] *Id*.

From: Brown, George J. :President & CEO [redacted]
Sent: Friday, May 03, 2013 10:31 AM
To: Harms Kelly; Liz Baxter; Aelea Christofferson; GOLDBERG Bruce; MYERS Brenda M; SAVAGE Louis D; King Rocky; Morawski Lisa; BORDEN Richelle; Stephanie Swan; Peacock, Bev : CO Admin; José Gonzalez; Ken Allen; Teri Andrews; Gretchen Peterson; Fauver Amy; Hutchings Laura; David Barenberg; Bianco, Diana; Jovick, Tom; Karjala Aaron
Cc: delaRosa Triz
Subject: RE: COVER OREGON: Oracle Contract Review

Kelly I am committed to performing my responsibilities as a board member. It is unreasonable to ask for a contract review with a 2 day suspense. I respectfully request that management allow at least a week to review complex documents.

.George

The Executive Director of Cover Oregon, Rocky King, responded:

On May 3, 2013, at 12:00 PM, "King Rocky" [redacted]> wrote:

Thanks George.

You are correct in the unreasonableness of my request for review in the stated time frame. I had two general options that I gave serious thought to: Instruct Oracle to cease work (we were informed that OHA had no funds to pay for contracted work beyond April 30th) in order give adequate review time for the contact or to accelerate the review and signing of the contract in order to have no gaps in the work being done. A third option was to execute an intergovernmental agreement with OHA to reimbursement costs incurred on an interim basis. However, I did not feel comfortable with that option at this time.

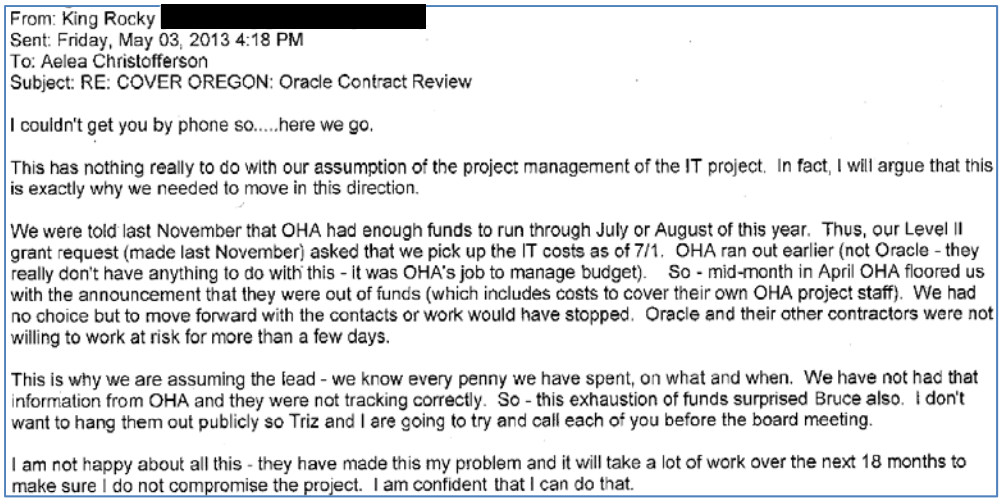
I left a voice message for you and would like to go through this in more detail via phone or in-person. Hopefully we can do that soon.

In response to questions from the Board about the budget shortfall, King wrote:

> It was shortfall that was not planned for nor did it result from a lack of communication or coordination with OHA. Simply put, OHA exhausted their grant funds (earlier innovator grant) faster than they had anticipated. The amount of our shortfall will be significant and we will present some general figures at the board meeting.[121]

Aelea Christofferson responded to Rocky King with additional concerns about the Oracle contract.[122] Rocky King further explained that "mid-month in April OHA floored us with the announcement that they were out of funds."[123]

[121] *Id.*
[122] *Id.*
[123] *Id.*



From: King Rocky [redacted]
Sent: Friday, May 03, 2013 4:18 PM
To: Aelea Christofferson
Subject: RE: COVER OREGON: Oracle Contract Review

I couldn't get you by phone so.....here we go.

This has nothing really to do with our assumption of the project management of the IT project. In fact, I will argue that this is exactly why we needed to move in this direction.

We were told last November that OHA had enough funds to run through July or August of this year. Thus, our Level II grant request (made last November) asked that we pick up the IT costs as of 7/1. OHA ran out earlier (not Oracle - they really don't have anything to do with this - it was OHA's job to manage budget). So - mid-month in April OHA floored us with the announcement that they were out of funds (which includes costs to cover their own OHA project staff). We had no choice but to move forward with the contacts or work would have stopped. Oracle and their other contractors were not willing to work at risk for more than a few days.

This is why we are assuming the lead - we know every penny we have spent, on what and when. We have not had that information from OHA and they were not tracking correctly. So - this exhaustion of funds surprised Bruce also. I don't want to hang them out publicly so Triz and I are going to try and call each of you before the board meeting.

I am not happy about all this - they have made this my problem and it will take a lot of work over the next 18 months to make sure I do not compromise the project. I am confident that I can do that.

In response, Christofferson asked "where is the money going to come from?"[124] King told her that the money would have to come from their Level II grant. He wrote:

> [P]roblem comes next year if we don't identify the appropriate savings and the fact we will be drawing down the IT federal grant funds two months earlier than planned. In sum, we included 18 months for our OHA/DHS IT costs (non CO) and now have to pick up 20 months. Additionally, the two we have to pick up are the most expensive since we are in the middle of development . . ."[125]

Documents also show Rocky King told Christofferson that OHA/DHS requested an extension from the federal government to expend their grant because they were "under budget and would need an additional 5-6 months to use all of their early innovator grant funds."[126] The federal government approved the request based on "the information supplied by OHA to the Feds (meaning expenditures vs. budget and the timing of those expenditures)."[127]

King forwarded this email chain to two members of the Governor's staff, Michael Bonetto and Sean Kolmer. King stated:

> To say that I'm spitting mad would be an understatement. . . . The shortfall is $11-12 million for May and June, plus 2-6 million OHA/DHS spent in April when they had no funds- but didn't know it. Most of this is due to cost allocation errors by DHS and their Modernization project. Jim S (DHS budget guy – however you spell it) and Carolyn should be canned but both will slip by with a wink – that's what really pisses me off.[128]

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[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*

In August 2013, Oregon misrepresented the status of the state-supported IT platform to the Department of Health and Human Services. In an August 20, 2013 submission to HHS, the Oregon Department of Human Services and the Oregon Health Authority stated that "OHA through the HIX-IT project successfully delivered a functional insurance exchange to Cover Oregon on April 30, 2013."[129] Elsewhere in the document, OHA and DHS stated "Since submission of the last IAPD-U, Oregon Health Authority (OHA) achieved the deliverables outlined in the early innovator grant and successfully delivered a functional insurance exchange to Cover Oregon."[130]

V. Cover Oregon was supported by a functioning website in April 2014

FINDING:	After Cover Oregon failed to launch on October 1, 2013 as expected, the technology teams worked around the clock to fix the website. By February 2014, the exchange portal launched for use by community agents and partners in Oregon.

On October 1, 2013, HealthCare.gov, Cover Oregon, and many other state exchanges launched to disastrous results.[131] As discussed in Section III of this report, an overly ambitious project scope and dysfunctional leadership led to Cover Oregon's failure to successfully launch. Oregon attempted to accomplish an ambitious project in a short period of time and failed to properly oversee project development. 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.

Oracle—which was part of the "tech surge" by the White House to fix HealthCare.gov—had invested significant resources in Cover Oregon, starting in October 1, 2013.[132] Oracle sent a team to Oregon to focus on completing the development of the state-supported IT platform. In November 2013, the Executive Director of Cover Oregon, Rocky King, emailed Oracle's Chief Corporate Architect, Edward Screven. King wrote: "I'm glad you are here – you will push your team and us and that is a good thing."[133]

Cover Oregon employees, Oracle consultants, and others worked around the clock to fix coding issues, among other things. On May 13, 2014, after the Cover Oregon Board of Directors voted to switch to HealthCare.gov, Pettit said: "The Oracle team here at Cover Oregon

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[129] Oregon Department of Human Services, Oregon Health Authority, *DHS Modernization Project, Implementation Advance Planning Document Annual Update, Department of Human Services and Oregon Health Authority, Office of Information Services, Submitted for approval by: Centers for Medicare and Medicaid Services, U.S. Department of Agriculture, Food and Nutrition Services* (August 20, 2013).
[130] *Id*. at 3.
[131] *See, e.g.*, Jordan Fabian, *Obama: Healthcare.gov 'a well-documented disaster'*, THE HILL (June 16, 2015).
[132] Alex Wayne, *Google, Oracle Workers Enlisted for Obamacare Tech Surge*, BLOOMBERG BUSINESS (Nov. 1, 2013).
[133] Email from Rocky King to Edward Screven (Nov. 19, 2013) (GOV_HR00115248).

consistently exhibits professionalism and focus, which is a credit to Mariusz Neter, the on-site Oracle team lead."[134]

The Committee obtained documents and testimony that show between October 1, 2013 and April 2014, the state-supported IT platform was greatly improved and that the technology portal was launched for use by agents and community partners in February 2014. For example:

- On October 25, 2013, Rocky King emailed Mike Bonetto:

  > We made some great progress last week – we had 15 IT'ers and a few program folks in a room Wednesday night where there was a lot of applause and smiles – none bigger than mine. It was a significant evening and considered breaking through the damn. For a variety of family groups, we demonstrated end to end (open account, shop, select plan and send enrollment file to carrier) and it worked the way it is supposed to.[135]

- On November 14, 2013, Rocky King sent an email to Mike Bonetto and others. He stated:

  > [T]he problems [with the website] are related to the expansive scope we took on – to [sic] much to do and to [sic] little time – we're about 2-3 months behind where we wanted to be. This has led to inadequate testing and quality control of the eligibility and shopping processes. The system is not broke, just not complete and needs testing.[136]

- In January 2014, an agent working for Cover Oregon to enroll individuals in health insurance emailed Sean Kolmer and others in the Governor's offices. The agent stated:

  > Cover Oregon is NOT broken. The website portal DOES work for agents. We can enroll people over the phone. Typically, the consumer will receive their enrollment material in about four days. . . . Our two person agency has enrolled about 1000 people in ten weeks.[137]

- In January 2014, Bruce Goldberg updated the Cover Oregon Board of Directors. He stated that Oracle:

  > [R]educed the critical defects from 45 to about 13. Parts of the system are working but also, obviously, important parts are not. Over the next few weeks Oracle is entering intense testing on key areas of the system and

[134] Email from Alex Pettit to Safra Catz, copying Clyde Hamstreet (May 13, 2014) (GOV_HR00073771).
[135] Email from Rocky King to Mike Bonetto (Oct. 26, 2013) (GOV_HR00014111).
[136] Email from Rocky King to Mike Bonetto, Amy Fauver, Rocky King, Triz DelaRosa, and David Barenberg (Nov. 14, 2013) (GOV_HR00019093).
[137] Email from Jonathan Sandau to Patty Wentz, Ian Greenfield, Nkenge Harmon Johnson, Rachel Wray, and Sean Kolmer (Jan. 30, 2014) (GOV_HR00114313).

when that is done we will have a better sense of when a fully functioning website can be available.[138]

- On February 6, 2014, Bruce Goldberg emailed the Cover Oregon Board of Directors. He stated:

  Our IT work remains focused on resolving the remaining issues so individuals can apply, shop, and enroll through the website in one sitting. The number of functional deficiencies continues to decrease and performance is increasing. After weeks of intensive work we will be testing several upgrades to the area of the site by agents and community partners. Our goal is to increase the functionality and usefulness of the partner portal for agents and community partners. Today, agents and community partners are using core areas of the system. They can apply directly into the eligibility calculation selection of the website and find out whether people are eligible for the Oregon Health Plan or private coverage. We are testing upgrades that could ultimately help them provide clients with on-the-spot information on tax credits, shop for plans and enroll. . . . During the time the portal is offline, agents and community partners can help clients apply through the hybrid process used by the general public to enroll in health care coverage.[139]

- In a February 2014 report, CMS wrote:

  Oracle has made progress in several systems engineering areas as evidenced by recent releases being delivered on time, and a stabilization of the system which has allowed CO to provide successful demonstrations of full functionality to stakeholders.[140]

- In February 2014, the portal launched for community agents and partners. At that point, a community partner emailed Cover Oregon. She wrote: "This is so awesome, I've already done two on here, it rocks."[141] According to a statement by Aaron Karjala at the March 13, 2014 Cover Oregon Board of Directors meeting, the agent and community partner portal used the same technology as portal for individuals. Cover Oregon, however, decided not to launch the portal for individuals at that time.[142] Notes from the meeting state:

  Karjala talked about the launch of the community partner and agent portal, and said both groups are able to help individuals through the end-to-end

[138] Email from Bruce Goldberg to Sean Kolmer, Mike Bonetto (Jan. 17, 2014) (GOV_HR0085495-96).
[139] Email from Sean Kolmer to Nkenge Harmon Johnson (Feb. 6, 2014) (GOV_HR00083579).
[140] CMS, Technical Assistance Report For: Oregon Health Insurance Marketplace, at 12 (Feb. 27, 2014) (COVEROR 000041-000065).
[141] Email from Patty Wentz to Bruce Goldberg, Dmitri Palmateer, John Kitzhaber, Mike Bonetto, Nkenge Harmon Johnson, Patty Wentz, Sean Kolmer (Feb. 18, 2014) (GOV_HR00054663-64).
[142] Oregon Health Insurance Exchange Corporation Board of Directors Meeting, Minutes, at 2-5 (March 13, 2014).

> experience of enrollment. Though there has been some system instability over the past three weeks, we continue to work through fixing those problems and make improvements in the system. He noted nearly 5,000 enrollments have been processed through the portal. He provided a functional deployment update and walked the Board through the charts. He pointed out that the interfaces are all live, as is most of the back end system functionality, with the exception of some financial management pieces. He noted that many of the same pieces currently being used for the community partner and agent portal will be used for the individual portal but it will not be released to the public until system stability is verified.[143]

- The meeting minutes also state that DelaRosa, then the Chief Operating Officer of Cover Oregon:

  > Said most agents are able to get most clients through enrollment without getting an error, but some complex cases are causing errors. She added that some errors involve rushing through or not answering all the questions so the organization is looking into additional training to help avoid simple errors. Ms. delaRosa said the end-to-end experience is reported to be 30 to 45 minutes.[144]

- During his deposition, Goldberg testified that the portal worked at times. He stated:

  > 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 to help make it work that made it more successful.[145]

- On March 6, 2014, Goldberg stated in an email: "Regarding Agent partner web enrollment: 600 agents have now used/been on it (not necessarily all have enrolled people, some just look). But we are now at 2800 people enrolled through the on line process."[146]

- On March 9, 2014, Goldberg emailed the Cover Oregon Board of Directors, Governor Kitzhaber, and members of his staff to provide an update on the status of Cover Oregon. Goldberg stated: "Oracle continues to have a team of ~65 staff here at Cover Oregon to maintain and fix the IT system. Despite recent contractual developments, the operational teams here on the ground are working collaboratively and effectively."[147]

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[143] *Id*. at 2-3.
[144] *Id*. at 3.
[145] Goldberg, Tr. at 149.
[146] Email from Bruce Goldberg to Sean Kolmer, Mike Bonetto, Patty Wentz (March 6, 2014) (GOV_HR00092439-441).
[147] Email from Bruce Goldberg to John Kitzhaber, Mike Bonetto, Nkenge Harmon Johnson, and Sean Kolmer (March 9, 2014) (GOV_HR00048553).

- During his transcribed interview, Pettit confirmed that the portal being used by agents and community partners was the same portal that would be used by individuals. He testified:

> Q. Okay. 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.
>
> So as an example, we had tried to -- on three occasions, they, Cover Oregon staff, had tried to demo me the application. So shortly after I got there, I wanted to see a demo of the application. So they sat me down and they said, All right, start typing in your stuff. For fun, I put in that I was male and I was 35 years old and I was pregnant. Well, it allowed me to do that.
>
> Then I kept going on. Well, finally, it blew up on the thing when it found that to be incompatible and threw me out and it crashed. You know, I stuck a thread, and it wasn't because of me it had to be rebooted, but, you know, I was part of the problem.
>
> We couldn't -- I could train people how to -- I could train the same people if you did a repetitive task how to do something. I couldn't train users in the wild.[148]

- At the Cover Oregon Board of Directors meeting on April 10, 2014, a regional insurance broker talked about his positive experience with the agent portal to enroll individuals and said the process takes about 20 minutes. He expressed that the portal was greatly improved and he was impressed with the system.[149]

Documents and testimony show that, by the end of February 2014, the state-supported IT platform was on track to be fully operational and ready to be launched to the general public.

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[148] Pettit, Tr. at 48-50.
[149] Oregon Health Insurance Exchange Corporation Board of Directors Meeting, Minutes, at 6 (April 10, 2014).

Then-Executive Director of Cover Oregon, Dr. Bruce Goldberg, convened a group of business and technology experts to evaluate technology alternatives for Cover Oregon and recommend the best technology option for the 2015 open enrollment period to the Cover Oregon Board of Directors.

The meeting notes from the Technology Options Workgroup show the website was functional. During their March 13, 2014 meeting, the group discussed how opening up enrollment to individuals "would only require releasing some patches (related to Eligibility Determination) and horizontal scale out of the infrastructure to handle the increase in transaction volume."[150] Because the functionality was already in place in production, they thought that "CO wouldn't expect significant downtime associated with opening up to individuals."[151] During that meeting the group discussed how, in general, the "level of effort to build Federal interfaces is not significantly different from what is required to get fully operational on Cover Oregon."[152] The meeting notes also show the group believed that "[w]hat has to change is CO being willing to aggressively manage scope, prioritize and say 'no'. Can't be all things to all people—need to stay focused on the core mission and what is required for success."[153]

In a transcribed interview, Pettit discussed the statement in the notes that the "functionality is already in place in production." He testified:

> Q. So can you explain what was meant in the by statement the functionality is already in place in production?
>
> A. Well, so this is where it gets a little more technical, and I apologize. I will do my very best to try to explain it in a way that's understandable, and help me I don't get that across.
>
> So when we talk about requirements, we talk about them in two general buckets. You have functional requirements and nonfunctional requirement.
>
> Functional requirements are things like what is this supposed to do. So I'm supposed to be able to take a person's name and their Social Security number and their address and I'm supposed to go and look and see if I have that as a match, and if I don't, I enter them in and I take it to the next. So the one function is getting a person's name to enroll.
>
> A nonfunctional requirement would be something like where I go through and say, Oh, wait a minute, it misspelled or I typed in or

[150] File sent from Laura Hutchings to George Brown, Liz Baxter, Teri Andrews, Alex Pettit, Sean Kolmer, Tina Edlund, Gregory Van Pelt, John Cvetko, Aaron Patnode, Bruce Wilkinson, Chris Blanton, John Kenagy, John Cimral, Robin Richardson, Triz delaRosa, Aaron Karjala (March 13, 2014) (GOV_HR00090441-43).
[151] *Id*.
[152] *Id*.
[153] *Id*.

fat-fingered my last name. I want to go back. I hit the back button, and it blows up.

So nonfunctional requirements are things that don't have to do with the behavior of the application, but have to do with how the application performs or functions. So a coffee cup, a coffee cup is supposed to be able to hold liquid. That's a functional requirement. A nonfunctional requirement is it has to hold it above 200 degrees Fahrenheit because that's how McDonald's likes to serve their coffee, you know, without shattering.

So that's kind of -- so those are the differences. There were numerous -- and that was what I found when I got there. There were numerous nonfunctional failures to the application when I got there. That was the thing.

What they're talking about here, and the only way that I can -- and I did not -- I did not represent this to this committee. This was represented by Aaron Karjala and the folks, that the functional requirements were -- and that's what he's talking about, are the functional requirements.

What was not being talked about were the nonfunctional requirements, things like –

Q. Can you give some examples?

A. Well, so we do these things called orphaning a record. So you would be typing in your stuff and you would hit the save button, and because your session -- you didn't know it, but your session had timed out to the system, you orphaned it. You got disconnected from the secure socket.

So because you got disconnected from the socket, you couldn't get back to your record. You could never go back and edit your information. It was what we called an orphan record, and it was a stuck thread in the system. The processor was still out there waiting for input that was never going to come because you had separated or disconnected from the socket.

So we would orphan these records. The only way to clear was you had to reboot the system. So during the time shortly after I got there, I went to where I rebooted -- I had a system reboot every night between shifts in order to clear out all of the stuck threads that we had. They call these IT errors. They call these all kinds of things, and stuck threads or orphaned records can be caused by a

> lot of different problems.
>
> Hitting a back button would orphan a record on the browser. Typing in a period, and if I typed Alex Pettit, Senior, period, it would orphan the record. If I would hit the save and I had taken too long because I didn't know my driver's license and so I pull out my driver's license and I type it in and I've waited too long and the session decided -- so what we have are called time to live, or TTLs.
>
> So the time to live settings in SEBOL [sic] were different than the time to live settings in the Web CT or the, you know, application that entered the data, and because those two TTLs were out of sync, one would expire sooner than the other and that would orphan the record. There were all kinds of things that would just kill you. You know, it was so frustrating to have to run these things to ground.
>
> So, fundamentally, these nonfunctional failures were extraordinarily painful to us and extraordinarily painful to the operation organization and would have been intolerable to a public in-the-wild launch, if you will, you know, how to -- don't hit the back button and have all your information ready before you type it in and make sure you don't have ask your kids Social Security number because you won't have time. It will time you out.
>
> I mean, it was -- those are things that you just can't -- you can't ahead of time train people to do. We could train agents to do those things and we could tell them, All right, before you start, make sure you've got all this information, and if you don't, don't even over start that application. Send it back. Tell them you've got to get that information, and that's we did. We would go and send the application back, because even if started it and then we got so far and we didn't have a piece of information, the agent would orphan the record and then we'd have go directly into SEBOL [sic] and then make the change to the record. You couldn't go through Web CT anymore to pull the record back.

Pettit also testified about another comment in the notes from the March 13, 2014 meeting: "[w]hat has to change is CO being willing to aggressively manage scope, prioritize and say 'no'. Can't be all things to all people—need to stay focused on the core mission and what is required for success."[154] Pettit stated that Oregon had an ambitious vision for the project and was attempting to do many things that other exchanges had not attempted to do, and that they should start focusing on ACA requirements. He testified:

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[154] *Id.*

Q. So do you recall this discussion from the meeting, what you were discussing about CO needing to aggressively manage scope?

A. Yes, ma'am, I do. So one of the things Cover Oregon had done that no other exchange had done is that they became the agent of record. So brokers would work for Cover Oregon. Cover Oregon would remit the broker's payments, would remit the commissions to the brokers, and if I was a broker for Cover Oregon, I was a broker for all 11 plans that were on the exchange.

Usually, a broker is only certified for a plan. So if I -- or a few plans. If I'm an Allstate agent, I sell Allstate insurance. I can't sell State Farm. I can't sell whatever.

The model that Cover Oregon took on was that if you became an agent for Cover Oregon, you could sell any of the 11 plans. You could sell Providence. You could sell Kaiser. You could sell Moda. You could sell whatever it was that was out there.

That was very different than what any other exchange had done, and that added a level of complexity to it. What we were saying there was that -- what we were proposing was that to further narrow scope or focus, Cover Oregon needed to look at those things that were not ACA requirements and to focus exclusively on what would be a minimally viable product and a minimally viable solution for everyone to use, and then after that, then you could go and add other features and functionalities, but begin with your base and create the base. Meet the requirement, and then go forward from that. Don't start with everything that we wanted to go with, and that was, we felt, part of their -- part of the problem that they were running into. Commissions at this time in March weren't being paid. In fact, weren't paid until June that we got that piece of it working. It was just -- and those were components that weren't required in ACA. So that was really what that discussion was around.[155]

[155] Pettit, Tr. at 51-53.

FINDING:	On March 27, 2014, the group of technology experts convened by Cover Oregon to evaluate the different technology options believed that the current technology could be fixed to meet the minimum ACA requirements by the November open enrollment period. To do so, they recommended an 8-10 week focused effort with clear milestones and target dates. They recommended moving to the federal system as a fallback option if milestones were missed.

On March 27, 2014, the Technology Options Workgroup recommended they continue to develop and deploy the existing technology and set a trigger date of late May or early June for invoking HealthCare.gov as a contingency.[156] Meanwhile, community agents and partners were using the portal to enroll individuals.

After the March 27, 2014 meeting, Bruce Wilkinson emailed the group and re-iterated his suggestion that while he agreed with the recommendation to continue to develop and deploy the current technology, he thought they should work on a parallel track. The group members agreed and their preliminary recommendation was to continue development and deployment of the current technology with a new vendor while actively retaining the ability to migrate to the FFM solution as a contingency if key Cover Oregon milestones were missed.[157] This was referred to as the "100 Day Plan."[158]

An email on March 27, 2014 shows Kitzhaber attended the March 27, 2014 Technology Options Workgroup meeting. After the meeting, he emailed Steve Brown. On March 27, 2014—one month before Cover Oregon was shut down—Kitzhaber wrote:

> The problem we are having with our technology is an <u>enormous distraction</u> to our larger transformation efforts. We had a meeting of our Technology Advisory Group this morning with the following consensus recommendation.
>
> <u>They believe that the current technology can be fixed to meet at least the minimum ACA requirements by the November open enrollment period</u>; they recommend an 8-10 week focused effort to do so with clear milestones that must be reached within a set timeframe. If the milestones are not met we would move to the federal system as our default option. We will be moving our State CIO over to Cover Oregon to lead the technology effort. We will be brining [sic] in a new COO to support the effort.[159]

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[156] Email from John Kenagy to George Brown, Bruce Wilkinson, Bruce Goldberg, Aaron Patnode, Sue Hansen, Greg Van Pelt, John Cimral, Chris Blanton, Robin Richardson, Erick Doolen, Alex Pettit, Sean Kolmer, Tina Edlund, copying Liz Baxter, Beverly Peacock, Richelle Borden, Aaron Karjala, Galen Gamble, Amy Acree, Joli Whitney, J Jennings, and Laura Hutchings (March 29, 2014) (GOV_HR00051183-85).
[157] Pettit, May 8, 2014 Cover Oregon Final Report, at 7.
[158] *Id*.
[159] Email from John Kitzhaber to Steve Brown (March 28, 2014) (CONGJK000167-168) (emphasis added).

Even after the decision was made to switch to HealthCare.gov, Cover Oregon continued to stabilize and use the IT system. The minutes from the May 8, 2014 Cover Oregon Board of Director's meeting state:

> Edlund shared a federal transition plan chart with the Board and noted that Cover Oregon remains a state-based marketplace through 2014. She said the transition of the IT system over the course of this year is laid out in this plan, and talked about transitioning Cover Oregon technology to OHA and noted there will be additional OHP development after the transition.[160]

About a month after it was announced that Cover Oregon would switch to HealthCare.gov, Pettit wrote: "I try to point out that everything other than SHOP is being used."[161] The minutes from the June 12, 2014 Cover Oregon meeting show Pettit made this point to the Board:

> Pettit noted his role is beginning to shift away from daily management as CO's Interim CIO to more oversight in his position as the State's CIO. He said that the Oracle programing effort will be done by June 15, and that the last of the Oracle code was pushed into production this week. He said that now all of the Oracle code, with the exception of SHOP, has been put into production. A code freeze will be in effect starting June 15, so no new functionality will be added. Pettit said that we have signed a contract with Speridian to work on fixes. Speridian had previously worked on interface development for Cover Oregon, and is familiar with the Oracle code base. He said redeterminations and change of life request activities are now supported by the system, and Cover Oregon is now working on the backlog of those requests. In response to a question by Ms. Baxter, Pettit said we will need to maintain and support our system at least through January 2015 and probably through March 2015 to close out the 2014 plan year.[162]

At the July 21, 2014 Cover Oregon Board of Directors meeting. Pettit provided a technology update. He said the system was stable, functional (but fragile), and being used. He said that they would be doing minor code modifications to the existing system at least through December 2014, and that Cover Oregon needed to sustain the system as the system of record through February 2015.[163] Baxter asked how change of circumstances for 2014 would be handled. Pettit "said throughout 2014, change of circumstance will be processed through [their] current systems, and noted that some December changes may end up being handled in the first few months of 2015 – another reason why the system [had to be] sustained through February 2015."[164]

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[160] Oregon Health Insurance Exchange Corporation Board of Directors' Meeting, Minutes, at 3 (May 8, 2014).
[161] Email from Alex Pettit to Tina Edlund, copying Mike Bonetto, Clyde Hamstreet (May 22, 2014) (GOV_HR00112635-650).
[162] Oregon Health Insurance Exchange Corporation Board of Directors' Meeting, Minutes, at 3 (June 12, 2014).
[163] Oregon Health Insurance Exchange Corporation Board of Directors' Meeting, Minutes (July 21, 2014).
[164] *Id*.

VI. Financial Sustainability

Not only was the technology operational, but some of the leadership at Cover Oregon believed that the exchange would be financially sustainable if it continued on its current track. As previously discussed, Section 1311 of PPACA provided funding assistance to the States for the planning and establishment of marketplaces and provides that no grant shall be awarded after January 1, 2015. Under PPACA, a marketplace must be self-sustaining by January 1, 2015, and the law gave states that set up their own exchanges broad discretion over mechanisms to achieve sustainability.[165] Starting in January 2015, establishment funds provided by CMS to the state-based health insurance exchanges could not be used for operational costs.

Some individuals in Oregon, such as Bruce Goldberg, believed that Cover Oregon could be financially sustainable. Goldberg emailed Amy Fauver and others on April 2, 2014, and wrote that Cover Oregon "can be financially sustainable and garner sufficient revenue to fund its revised budget."[166]

From: GOLDBERG Bruce <[redacted]
Sent: 4/2/2014 3:43:54 AM +0000
To: Fauver Amy <[redacted]; Bruce GOLDBERG <[redacted]; KOLMER Sean P * GOV <[redacted]
CC: GOLDBERG Bruce <[redacted]; WENTZ Patty <[redacted]
Subject: RE: Do we have bullets on financial stability?

Cover Oregon is funded on federal grant dollars through 2014

Beginning 2015, Cover Oregon is funded through an assessment built into carrier rates

Current assessment is ~2.5% of premium (note federal is 3.5%)

Enrollment projections for 2014 and 2015 were recently revised downward to reflect changes in the individual market (extension for 1 year of many plans in the individual market) and decreased consumer confidence due to problems with the website

At the same time, Cover Oregon recently revised its 2015 and 2016 operating budgets downward.

If Cover Oregon continues to track, as it currently is, to the revised enrollment projections, it can be financially sustainable and garner sufficient revenue to fund its revised budget.

[165] *See* Austin Bordelon, Supported State-Based Marketplaces Forge New Option for States, LEAVITT PARTNERS (Nov. 11, 2014).
[166] Email from Bruce Goldberg to Amy Fauver and Sean Kolmer (April 2, 2014) (GOV_HR00050690).

In a deposition, Goldberg testified as to whether he in fact believed that Cover Oregon could be financially sustainable. Goldberg stated that he did believe Cover Oregon could be financially sustainable, with the caveat that he believed it could be financially sustainable if they had a website that needed "very little maintenance." Given the ambitious scope of their project, and the dynamic nature of healthcare policy, it is unclear whether a website that needed "very little maintenance" was possible. He testified:

> Q. In the e-mail you state, 'If Cover Oregon continues to track, as it currently is, to the revise enrollment projections, it can be financially sustainable to garner sufficient revenue to fund its revised budget.'
>
> So is this correct, that you believed that Cover Oregon could be financial sustainable?
>
> A. Yes.
>
> Q. Did you continue to believe that Cover Oregon could be financial sustainable?
>
> A. I believe that Cover Oregon could be financial sustainable if it had a working website. You know, the issue here was the agency, as indicated in here, looked to fund itself out into the future on the assessment -- the percentage of the assessment that it got once it came off of the federal grant.
>
> If Cover Oregon was able to have somewhere upwards of a hundred thousand enrollments, I'll felt at that point that the organization could be sustainable, with one big caveat. And that caveat really relates to some of the decisions that were made, which was -- the caveat was how much of the budget needed to go into the website. And, as you can imagine, if there was $200 million budget and it was going to cost $150 million to fix the website, that wouldn't have been sustainable. If it was a $200 million -- I'm just picking round figures. I don't know that the budget was $200 million. If it was $200 million and it only cost, you know, 25 to $40 million to fix and maintain the website, then it was sustainable. But, you know, these protections were based on having a functioning website that needed, you know, minimal dollars to fix and maintain.
>
> Q. When you say 'maintain,' were there any discussions about whether the staffing at Cover Oregon was appropriate to maintain the website?
>
> A. Yes, there were discussions about that.

Q. What did you guys discuss, was there appropriate staff at Cover Oregon to maintain the website?

A. There were a lot of discussions about that and I would say that what was -- it was unclear at that -- I mean, we didn't have a working website at that time and it was unclear exactly what staff we would need. It was going to depend on a whole variety of decisions that would get made down the road about the website. So, yes, there were a lot of discussions about that. Obviously, if it was a smoothly running website that needed very little maintenance, that would have led to one kind of a staffing scenario. A scenario where there were constantly things that needed to be fixed, would have needed a lot more people.

Q. Is it fair to say that the states who had websites up and running, because the requirements were changing between 2013 and 2014, were going to have to change their system in some way, regardless of the status of their website?

A. There were always changes so, yes, people would always need to change some things. And I think the issue there is what -- how substantive the work is to change something. You know, in my experience that's always the big difference between the technocrats and the policy people. The policy people say, 'Oh, we're just going to change this one thing and that's not a big deal.'

And the technology people come back to you and say, 'Well, yeah, it sounds like it's not a big deal, but that is going to be -- you know, take a huge amount of money.' And I have been surprised on both ways. Changes that I thought would be tremendous in positions on staff, they say, 'Oh that's actually really easy.' So I think it really depends.[167]

Later in the deposition, however, Goldberg testified that the future budgets were looking "tighter and tighter." He stated:

Q. And at the time did you believe that Cover Oregon had the resources to make any move necessary or were the windows closed?

A. I felt the windows were closing. That -- you know, it was a tough period because of -- you know, it was more about the future budget, which was reliant on -- the organization was going to be

[167] Goldberg, Tr. at 36-38.

transitioned into relying on its piece of the assessment. Enrollments were not quite what we had projected. What had been projected in some of the budgets -- I think, because of some, you know, lack of consumer confidence in the website, a number of individuals enrolled direct with carriers. And so Cover Oregon didn't get that piece of the -- of the premium. So the future budgets were looking tighter and tighter.

Q. And at the time are you discussing your budget with CMS?

A. You know, we had budget reports. I'm assuming budget reports went to CMS, but I don't recall, myself, having direct conversations with them.

Q. Do you believe that the May 2013 budget shortfall impacted your budget the next year?

A. I think marginally. You know, that was a -- it was -- you know, I believe in the order of $10 million in a 250 -- $300 million budget over the course of the project and I felt that there were some ways that could -- you know, "manage" those expenses doing things like cutting back on advertising, et cetera, that wouldn't adversely affect the guts of the operation.

Q. You had mentioned this before. Is it your view that you spent too much on advertising?

A. You know, I think that there was a pretty rich advertising budget and I think the state invested a lot in that and, you know, certainly, in retrospect, having spent a lot of money advertising something that ultimately didn't work is a shame.[168]

Cover Oregon did in fact have "a pretty rich advertising budget." An article from September 2013 reported that Oregon would spend almost $28 million to advertise the exchange.[169] Furthermore, Clyde Hamstreet's draft report to Aaron Patnode, Kitzhaber, and the Cover Oregon Board of Directors described concerns about the exchange's financial sustainability. In a draft version of the report, Clyde Hamstreet wrote:

> Elements of financial management lay in three separate parts of the organization, ~~all~~ relegated two or three levels below the executive director. This fragmentation led to incomplete financial planning and oversight. Contract and invoice authorization was dispersed and poorly controlled, and there were virtually no controls on IT spending. Expense run rates

[168] *Id.* at 158-159.
[169] Kristian Foden-Vencil, *Oregon to Spend $28 Million to Raise Awareness of Health Exchange*, OBP (Jan. , 2014).

> would have left Cover Oregon out of funds by 3Q14. There was no effective budgeting or variance tracking, and where any such efforts did exist there was no accountability. No meaningful business planning was current, except for grant funds forecasting, and there was no formal agreement in place between Cover Oregon and OHA related to cost sharing or fees for service.[170]

Clyde Hamstreet also wrote that when his team took over in April, "[t]he financial and operational situations were on the verge of collapse."[171] In the report, Hamstreet advised that "[f]uture planning for Oregon's health insurance exchange should be done in a more businesslike manner than in the past."[172] According to Hamstreet, Cover Oregon engaged in questionable business planning. Hamstreet wrote:

> Cover Oregon leadership appears not to have thought through how it would pay for licensing fees and support and maintenance agreements amounting to $2 million per month while living on annual operating revenues of $10 to $20 million per year. One of the most significant costs in this respect related to the installation of PeopleSoft software to support the organization's business activities. PeopleSoft is a complex ERP system seldom seen in companies with less than $150 million in annual revenue. The enterprise level of QuickBooks is more appropriate to Cover Oregon, and that is what Hamstreet & Associates has recommended.[173]

CMS awarded these startup companies hundreds of millions of dollars to build and develop a state-based exchange. Hamstreet's assessment of Cover Oregon shows that they did not use best practices related to fiscal responsibility and sustainability.

Questions have been raised about the financial sustainability of other health insurance exchanges developed under the PPACA.[174] On April 27, 2015, the Department of Health and Human Services Office of Inspector General issued an Early Alert that stated: "without more detailed guidance from CMS, SBMs might have used, and might continue to use, establishment grant funds for operating expenses after January 1, 2015, contrary to law."[175]

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[170] Hamstreet & Associates, Memorandum from Clyde Hamstreet to Aaron Patnode, Cover Oregon Board, Governor Kitzhaber, Overview of Hamstreet Cover Oregon engagement and recommendations (August 29, 2014).
[171] *Id*.
[172] *Id*.
[173] *Id*.
[174] Anna Wilde Mathews, Anna Steele, *Aetna Reports Surge in Profits and a Dark Spot on Results: Health insurer's losses in its Affordable Care Act business cast a shadow*, THE WALL STREET JOURNAL (Feb. 1, 2016).
[175] U.S. Department of Health and Human Services, Office of Inspector General, *Memorandum to Andrew M. Slavitt, Acting Administrator, Centers for Medicare & Medicaid Services from Daniel R. Levinson, Inspector General, Early Alert: Without Clearer Guidance, Marketplaces Might Use Federal Funding Assistance for Operational Costs When Prohibited by Law* (April 27, 2015).

On May 1, 2015, a news source reported that "[n]early half of the 17 insurance marketplaces set up by the states and the District . . . are struggling financially."[176] The article also stated "[m]any of the online exchanges are wrestling with surging costs, especially for balky technology and expensive customer call centers – and tepid enrollment numbers."[177]

Hawaii's state insurance exchange, the Hawaii Health Connector, was shut down in 2015 because, among other things, the exchange would not be financially sustainable. Hawaii was awarded $204 million in federal dollars to develop and implement a state-based exchange, but a 2014 report indicated that the website would not be financially viable until 2022.[178]

VII. Cover Oregon's switch to HealthCare.gov in April 2014

When Oregon scrapped the state exchange in favor of HealthCare.gov, taxpayers' $300 million investment in Cover Oregon was lost. Documents and testimony obtained by the Committee show that, inconsistent with the intent of Oregon law and the governance process adopted by the Cover Oregon Board of Directors, the decision to utilize the federal technology was secretly driven by Kitzhaber, his staff, and his campaign advisers. The Governor's campaign advisers expressed concerns about the Technology Option's Workgroup 100 Day Plan and the Governor's office preferred that Oregon move to HealthCare.gov. Rather than publicly advocate for a move to HealthCare.gov, the Governor's staff and campaign operatives privately thwarted the work of the Technology Options Workgroup and manipulated the process to coerce a decision to switch to HealthCare.gov.

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. As a quasi-public entity run by an independent Board of Directors, Cover Oregon was supposed to be insulated from direct political control and operate independently from normal state oversight. It is clear that the Oregon Legislature intended to create an independent organization when establishing the Oregon Health Insurance Exchange (Cover Oregon). Section 4 of Oregon Senate Bill 99 (2011) specifically provided that the exchange is to be governed by a Board of Directors appointed by the Governor and confirmed by the Senate.[179] Section 9 of the Bill provided that Cover Oregon is "under the supervision of an executive director appointed by the corporation board of directors. The executive director serves at the pleasure of the board. The executive director shall be paid a salary as prescribed by the board."[180] Before assuming the duties of the office, among other things, the executive director must "subscribe to an oath that the executive director [would] faithfully and impartially . . . discharge the duties of the office and that the executive director [would] support the Constitution of the United States and the Constitution of the State of

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[176] Lena H. Sun, Niraj Chokshi, *Almost half of Obamacare exchanges face financial struggles in the future*, THE WASHINGTON POST (May 1, 2015).
[177] *Id*.
[178] Hawai'i Health Connector, 2014 Annual Report, A Path to Sustainability, at iv (Submitted Dec. 31, 2014).
[179] Senate Bill 99 (Oregon). Oregon Senate Bill 4154 from February 2014 allowed the Governor to remove all Board members within one year for a temporary period. *See, e.g.*, Email from Nkenge Harmon Johnson to Rachel Wray (Feb. 5, 2014) (GOV_HR000100587-89).
[180] ORS § 741.201 (as enacted June 2011 in Senate Bill 99, later amended by Senate Bill 1, enacted March 2015).

Oregon."[181] The executive director was responsible for employing, supervising, and terminating the employment of such staff as the executive director deems necessary.[182]

Members of the Board of Directors and the executive director served in positions of trust and had a fiduciary responsibility to act in the best interest of the corporation. The Board adopted by-laws and a policy manual clarifying the public corporation's governance structure. The Board's governance model was discussed in the federal grant narrative.[183] Section 2 of the Board's by-laws stated that Cover Oregon "is a public corporation, and an independent unit of State government."[184] Article 4, Section 3 of the Board by-laws stated "the Board members may create policies that describe governance structure, decision making processes, and other relevant board processes. Such policies may be outlined in a board policy manual."[185]

Members of the Board of Directors did not believe that the Governor had a role in Cover Oregon's governance process. In an interview a few days after the Board of Directors at Cover Oregon voted to move to HealthCare.gov, the chair of the Board, Liz Baxter, stated: "We have not had a lot of interaction with the Governor. We were appointed by him and confirmed by the Senate. There was no reason to involve the Governor. It was not part of our governance and not part of our policy manual."[186]

The Committee obtained documents and testimony that show, however, Kitzhaber and his staff were heavily involved in discussions about the technology options for Cover Oregon. According to the Oregon Department of Justice, Cover Oregon was prohibited from sub-delegating the functions of its Board. In a May 2014 memorandum, an Oregon Department of Justice attorney stated that Cover Oregon "cannot lawfully delegate the discretion vested in the Board of Cover Oregon. Board members are required to do their jobs personally, by the exercise of discretion and judgment."[187]

In a deposition, Goldberg testified about the governance process at Cover Oregon. Goldberg testified that, under the statute, the Governor's only involvement was appointing the members of the Cover Oregon Board of Directors. He stated:

> Q. Did the governor have any oversight authority over Cover Oregon?
>
> A. No. It was -- his only involvement in the statute was the appointing of the board.[188]

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[181] *Id*.
[182] *Id*.
[183] Oregon Health Insurance Exchange Level 1 Grant Narrative, Funding Opportunity IE-HBE-11-004, at 5 (March 30, 2012).
[184] Bylaws of the Board of Directors, Oregon Health Insurance Exchange, Article 2, Section 2.
[185] *Id*., at Article 4, Section 3.
[186] Dave Blanchard, *Cover Oregon Postmortem With Board Chair Liz Baxter*, OREGON PUBLIC BROADCASTING (April 29, 2014).
[187] Memorandum to Liani J. Reeves, General Counsel, Office of the Governor from Theodore C. Falk, Attorney-in-Charge, Health and Human Services on Authority for Cover Oregon Partnership Exchange; DOJ File # 989001 – GH0360-14 (May 15, 2014) (GOV_HR00039250-59).
[188] Goldberg, Tr. at 33.

A. Kitzhaber's political operatives become involved in Cover Oregon

The Committee obtained documents and testimony that show 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. Kitzhaber's Chief of Staff, Michael Bonetto, and one of his top campaign advisers, Patricia McCaig, led these efforts, despite legislative language that vested control over Cover Oregon with the Board of Directors.

1. The Governor's office mixed campaign staff and official staff

FINDING:	The Governor's office mixed campaign business and official business. The Governor's Chief of Staff, Michael Bonetto, coordinated Kitzhaber's re-election campaign team and the Governor's official work on behalf of the state. The Governor's office used campaign funds to support the Governor in his official capacity.

Documents and testimony show Bonetto coordinated Kitzhaber's re-election campaign team and the Governor's official work on behalf of the state. The coordination between Kitzhaber's political and official operations developed in February 2014, around the time that the Governor's office was preparing for the release of the First Data report on Cover Oregon.

The Committee obtained an email from McCaig to the Governor that suggested the campaign could hire Raphael full time to work on Cover Oregon issues.[189]

To: John Kitzhaber [redacted]
From: Patricia McCaig
Sent: Fri 2/7/2014 10:43:01 PM
Subject: Tim
MAIL_RECEIVED: Fri 2/7/2014 10:43:14 PM

Campaign hires Tim. 4-6 weeks almost full time. Coordinates with Nkenge but does all the leaning into the "plan" and manages to the extent possible the independent review path.
I had started shopping this idea last night. Tim is willing. Mark and Kevin think a good idea.
You, what do you think? How will it play with Mike and Nk

In a deposition, McCaig testified about her suggestion that Tim Raphael get paid by the campaign to manage "to the extent possible the independent review path."[190] McCaig stated:

> Q. And so, what did you mean that Tim coordinate with Nkenge while being paid by the campaign? Is that what you were recommending?
>
> A. Yes. In Oregon, and the same with Mark and Kevin, Mark and Kevin had been on the Governor's campaign salary since early 2013, and had been communications advisers to him in that

[189] Email from Patricia McCaig to John Kitzhaber (February 7, 2014) (CONGJK001101).
[190] *Id.*

capacity all through 2013 to help him with his agenda in others areas, right, not health care, completely separate areas.

It's not unusual or, it's not unusual that campaign funds can be used to support an official in his official capacity, like a Governor, or a Congressperson, or a Secretary of State. The suggestion here was in order to help improve the capacity of the Governor's office. I was, in some ways, just volunteering. I wasn't asking to be paid, because I didn't think I was going to be spending that much time on it.

The suggestion was that we would bring Tim on board in a way that would allow him to earn some income by paying him from the campaign to facilitate and add capacity to the Governor's office.

Q. Okay. And why were you volunteering in the unpaid capacity?

A. Because he's my friend.

Q. And then you suggest that Tim manages, to the extent possible, the independent review path. What independent review path were you referring to?

A. The communications strategy, which was part of what the Governor had expressed his frustration on, was that the office itself, because of a new communications director and a new, who had no executive experience in an executive office, and the chief of staff were not facile enough to understand that there's a need to have thoughtful, good work.

They understood that. But delivering it and preparing the Governor for it, so that he can be the most effective in communicating it was missing. And that was the concern coming with the First Data report, that this was a major piece of work that was being done. And it was going to be released sometime in, I believe, February or March. And that the Governor was, it was the next step in the Cover Oregon evolving, emerging issues. And the Governor wanted to be confident that we -- and there was a plan for addressing the issues that came out of it and a way to communicate about it.[191]

The day after Patricia McCaig suggested to Kitzhaber that the campaign hire Raphael, on February 8, 2014, Michael Bonetto emailed McCaig and Scott Nelson and wrote that there was

[191] McCaig, Tr. at 21-22.

an agreement "that we need an immediate mtg with core staff (on both sides) to outline process/planning moving forward."[192]

From: Michael Bonetto
Sent: 2/8/2014 4:33:03 PM
To: Patricia McCaig; Scott Nelson
Subject: Re:

Believe we agreed that we need an immediate mtg with core staff (on both sides) to outline process/planning moving forward. Would suggest that the group include some combination or all of names below. This is the crew to initially drive process and outcomes around controlling Cover Oregon strategy...and would/could transition into A51. This group will need to meet weekly for a minimum of the next 8 weeks. Ideally, we may be able to contract with Tim for some of this work...but will need all of us to a) identify key areas to target and b) ensure that the work is getting done.

I think we should have this group meet on Tuesday evening this week....could be in Portland. Depending on how far we get...we could meet with Gov the following evening to provide high level overview...but not sure we need it just yet.

Bonetto
Dmitri
Nkenge
Duke (can leave off for now...but would include post Cover Oregon work)

Scott
Patricia
Tim
Mark
Kevin
Curtis

With respect to this email, Bonetto testified in a deposition that the individuals listed were broken into two groups because the first group represented individuals that worked in the Governor's office and the second group represented "outside advisers."[193] Bonetto also stated that the team did not materialize the way he suggested in the email and that the members of this combined team were not the same as the members of the A51, or "Area 51" team.[194] According to Cylvia Hayes, the Area 51 team was a campaign oriented team and intended to provide oversight to the campaign staff and consultants; provide insight into context, political challenges, and opportunities; oversee the overall strategic direction of the campaign; and provide "soul" to the campaign.[195] McCaig testified the Area 51 team was "[a] group of supporters and some other trusted folks that were personal friends of the Governor and the first lady."[196]

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[192] Email from Michael Bonetto to Patricia McCaig and Scott Nelson (Feb. 8, 2014) (RMBG2004328-29).
[193] H. Comm. on Oversight & Gov't Reform, Deposition of Michael Bonetto, Tr. at 168 (Feb. 10, 2016).
[194] *Id*.
[195] Email from Cylvia Hayes to Mark Wiener, Kevin Looper, copying Patricia McCaig (March 30, 2014) (COGR_SHCBAR_KL_0826).
[196] McCaig, Tr. at 46.

On February 8, 2014, Patricia McCaig emailed Kitzhaber and Cylvia Hayes to lay the groundwork for Kitzhaber's political operatives to become more involved in Cover Oregon issues. She offered to staff Michael Bonetto "quietly, privately."[197]

From: Patricia McCaig [redacted]
Date: Saturday, February 8, 2014 12:47 PM
To: John Kitzhaber [redacted], Cylvia Hayes [redacted]
Subject: A temporary plan?

Ok, it's clear we need more accountability and follow-thru from the campaign and some specific, intensive management of the Cover Oregon issues. I do not think the governor's office has the staff capacity on the Cover Oregon piece. And no-one is driving Mark and Kevin (bless their hearts). Scott is a one man machine.
How about?
Mike chairs a joint campaign and key staff meeting weekly starting ASAP
I staff him (quietly, privately) with the campaign related items that help focus/drive Kevin and Mark, i.e. what's the hiring schedule, when's the first draft of the poll, what's the date its going into the field, things like that. We'll wrap Scott into this with his campaign pieces - timing for hiring plan, etc.
We also set a schedule and process for getting a campaign committee with a chair in place that probably would take over from Mike. (Area 51)
Tim comes on, almost full time, for a limited time, paid for by the campaign to manage the Cover Oregon Getting it in Perspective Plan.

To do that he would identify what Mike and Nkenge need to be managing from the gov office, bridging the information gap with the campaign, and most importantly identifying and teeing up the critical and emerging Cover Oregon issues for the combined team so we can develop a plan and be more prepared both at the state level and the campaign. We need one person who's entire purpose is getting their head around this from a communication/planning perspective and providing the rest of us with the right level of information to make informed decisions.

Is this a temporary fix? I've had good conversations with Mike, Tim, Mark, and Kevin separately. Talking with Mark and Kevin again at 3:00.

Cylvia Hayes responded: "As I said when we spoke earlier today, I think this is a great plan and I am very appreciative that you are willing to step into this 'job' in the midst of everything else on your plate. That is true public service."[198] A few hours later, Kitzhaber responded: "Princess, THIS SOUNDS VERY GOOD TO ME!!!"[199]

Documents and testimony show the work of the Governor's office, the campaign, and Cover Oregon were inextricably intertwined. Discussions about Cover Oregon often included individuals with no authority over the exchange. In the email above, Cylvia Hayes, who did not have any Cover Oregon role or responsibilities, was included. Patricia McCaig, a campaign

[197] Email from Cylvia Hayes to Patricia McCaig, John Kitzhaber, copying Mike Bonetto (Feb. 9, 2014) (CONGJK000120); Email from Patricia McCaig to John Kitzhaber (Feb. 8, 2014) (McCaig Production PMc 00001-2).
[198] Email from Cylvia Hayes to Patricia McCaig, John Kitzhaber, copying Mike Bonetto (Feb. 9, 2014) (CONGJK000120).
[199] Email from Patricia McCaig to John Kitzhaber (Feb. 8, 2014) (McCaig Production PMc 00001-2).

adviser, recommended "intensive management of the Cover Oregon issues," and advised that no one in the Governor's office could fulfill this need. Kitzhaber agreed. McCaig then advised that Tim Raphael be paid full time by the campaign to manage a Cover Oregon initiative.[200] Kitzhaber liked the suggestion. McCaig also proposed a direct link from the governor's office to the campaign to bridge the information gap—not to improve Cover Oregon—but to prepare a public relations response to any Cover Oregon issues at the state level and the campaign.

McCaig recommended that she staff Bonetto on February 8, 2014. McCaig did not, however, publicly disclose her work for Kitzhaber's campaign until September 2014.[201] The campaign started paying McCaig, and publicly disclosing her involvement, after the media criticized a lack of transparency at Kitzhaber's campaign and a possible conflict of interest, in August 2014.[202] In a deposition, McCaig testified about the February 8 email exchange with the Governor. McCaig stated:

> Q. In the email to John Kitzhaber and Cylvia Hayes, you say Mike chairs a joint campaign and key staff meeting weekly starting ASAP.
>
> A. Uh-huh.
>
> Q. What did you mean by a joint campaign and key staff meeting?
>
> A. So on February 7th, the Governor had a phone call with all of us. And in that phone call he expressed the issues I raised with you all before, concerns about the overall capacity. And there were a number of people on the phone. I believe Mark and Kevin were on the phone, Tim, Nkenge, Mike.
>
> And I believe there's another email that follows up from that from Mike Bonetto, that outlines his take-away from the call. And this is a follow-up to that in terms of the combined take-away from the call. And this is a reaction and a response, and a proposal to the Governor to begin to think about how we could address the issues that he identified on that phone call. And they were all wrapped around his concern and lack of feeling prepared generally about moving forward. And some of that had to do with, most of it had to do with Cover Oregon and his ability to communicate effectively about it, and how he was paralyzed, and his office was unprepared.

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[200] *Id*.
[201] Nigel Jaquiss, *Working Off the Books: Contrary to state election laws, Gov. John Kitzhaber has failed to disclose the role of a key campaign consultant*, WILLAMETTE WEEK (Sept. 23, 2014).
[202] Laura Gunderson, *Oregon Republican Party questions Patricia McCaig's work for John Kitzhaber, Governor's campaign responds*, THE OREGONIAN (September 24, 2014); Nigel Jaquiss, *Working Off the Books: Contrary to state election laws, Gov. John Kitzhaber has failed to disclose the role of a key campaign consultant*, Willamette Week (Sept. 23, 2014).

Some of it was also about the recognition that he needed to get a campaign up and running and what was the process and the format for doing that. So this was the first draft at a response on how to address that.

Q. Okay. And the team that you created, was that referred to as the SWAT team?

A. That was the proposal which came, I believe, in an email later.

Q. Do you know if it was termed the SWAT team? Was that –

A. I made that up.

Q. Okay. So it was the SWAT team? That was my question.

A. It wasn't like a real SWAT team.

Q. So the SWAT team was the joint campaign and key staff meeting that you're referencing?

A. Well, that was the proposal. It actually didn't evolve that way.

Q. What do you mean it didn't evolve that way?

A. Well, Mike ended up not chairing anything. There ended up not being a concerted or concentrated campaign effort until late April. It didn't even have a campaign manager, a poll, any of those things until May. So the focus really was, and really did move to, dealing with the communications issues that were confronting the Governor.

Q. So this was the SWAT team, but it didn't evolve in the way that you –

A. No.

Q. So why are you recommending that the Governor's office coordinate with the campaign? Is that –

A. Again, I understand the question because of the word campaign. And people read into that re-election I think. Is that what you're asking? Because I think I've made it clear that what we did was use funds that were available out of the campaign to add capacity, in an appropriate and legal way, to work to support the Governor.

> And so that's what campaign is, the distinction there is that it's campaign funds that can be used to support the Governor in his official capacity. And we hired Tim to do that.[203]

Documents show the SWAT team evolved to include individuals paid by the campaign and official state staff. It primarily focused on Cover Oregon issues at first. McCaig testified that the funds from former Kitzhaber's campaign were "going to assist him in his formal capacity."[204] She stated:

> Q. And so Tim is being paid by the campaign. Are these campaign funds his re-election campaign funds?
>
> A. There is only one campaign. It's been in existence for however long it's been in existence.
>
> Q. There are the same funds that he would then use for his re-election campaign?
>
> A. Yes.
>
> Q. Tim was being paid by the funds that he would use for his re-election campaign?
>
> A. Yes.
>
> Q. So when you say that the SWAT team didn't materialize the way that you envisioned, I'm kind of seeing it as Tim was paid by the re-election campaign, he was a member of the SWAT team?
>
> A. Yes.
>
> Q. And Mike Bonetto was also a member of the SWAT team. Is that correct?
>
> A. Yes. To the extent that you're still calling it the SWAT team, but yes.[205]

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[203] McCaig, Tr. at 36-39.
[204] *Id*. at 42-43.
[205] McCaig also testified that she disagreed with emphasizing the role of the campaign in the work of the joint campaign and key staff meeting. She noted "The materials that you have in front of you, though, demonstrate that we were dealing not with a re-election campaign, there's nothing to indicate that this was about electoral politics in the thousands of emails you all have. That what you have in front of you is clearly that the Governor -- and that his funds from his campaign were going to assist him in his formal capacity, which is entirely legitimate to do, and that if there were campaign-related secondary items that -- and they were incidental and not the focus of this group of people's work at all." *Id*.

McCaig testified that she began working for the campaign in September 2014. She stated:

> Q. Okay. Did you have a role with the Governor's 2014 re-election campaign?
>
> A. Yes.
>
> Q. When did you begin in that role?
>
> A. September of 2014.
>
> Q. You didn't work on the Governor's -- did you work on the Governor's re-election campaign at all before September 2014?
>
> A. Incidentally, as he asked questions about it, but not primarily, no.[206]

Documents and information obtained by the Committee, however, show McCaig played a substantial role in advising both the campaign and the Governor's office before September 2014. McCaig testified that she was a member of the Area 51 team. The Area 51 kickoff meeting was held in early April 2014—well before McCaig started publicly reporting that she was working on Kitzhaber's re-election campaign. She stated:

> Q. Were you a member of the Area 51 team?
>
> A. I was.
>
> Q. What was the Area 51 team?
>
> A. A group of supporters and some other trusted folks that were personal friends of the Governor and the first lady.
>
> Q. This was a campaign group of supporters for the Governor?
>
> A. Yes.
>
> Q. What were your responsibilities for the Area 51 team?
>
> A. To be pithy.
>
> Q. Can you elaborate on that? What do you mean to be pithy?
>
> A. Like all of the people, we had a personal and long history with John Kitzhaber. And we were there because I think he valued us and wanted our input on the overall agenda items and direction of the campaign.
>
> Q. On the second page of the email, Cylvia Hayes writes agenda items

[206] *Id*. at 16-17.

for this call -- which I believe is the Area 51 kick-off meeting?

A. Uh-huh.

Q. If you look at the second to last bullet point, she writes the Cover Oregon 100-day plan. Do you know what the Cover Oregon 100-day plan was?

A. You know, I don't directly. Whether that was just clever wordage at that point, but it should have been on the agenda. It would have been on the agenda there for sure.

Q. What do you mean it should have been on the agenda?

A. There was no one who wasn't talking about the, quote-unquote, "debacle" that was Cover Oregon. And the Governor's supporters, with as much as intensity as anyone, were interested in, concerned about what was happening. So there was, it would have been inevitable that it would have been a topic for the people in this room to just want to know what was going on.

Q. So you think the supporters of the Governor's re-election campaign would definitely be interested in knowing what was going on with Cover Oregon?

A. Sure. There was nobody who didn't want to know what was going on with Cover Oregon, including national media, foreign media. They were following him around the State.[207]

McCaig also testified as to what she meant when she wrote she would staff Bonetto "quietly and privately." She stated:

Q. Okay. You then suggest in the email that you staff him -- is him Mike Bonetto?

A. Yes.

Q. Quietly and privately with the campaign-related items that help focus/drive Kevin and Mark. What did you mean by quietly and privately?

A. Nobody can believe I'm ever quiet or private. It's been a subject of a bit of ridicule.

Q. Why would you staff him quietly and privately as opposed to --

[207] *Id.* at 46-47.

> A. Because the Governor had made it clear, and I felt this way personally as well, that we wanted to support Mike in his job. We wanted him to succeed in his job and have the confidence and the credibility of the people who were the Governor's trusted advisers, as well as his staff.
>
> And I wanted to make it clear to the Governor that I understood that that was his priority, and that helping Mike would be something that I could do in a thoughtful, not abrasive, larger-than-life kind of way. And that's what I meant by that.[208]

With respect to McCaig's offer to staff him "quietly and privately," Bonetto testified:

> What I think, as I highlighted earlier, you know, as we were dealing with individuals who were really on this issue, you know, being outside advisers, we wanted to make sure that there was as conservative approach as possible dealing with anybody who may be also working on the campaign.[209]

The arrangement may have violated an Oregon law that prohibits public employees from engaging in political activity. Oregon law, ORS § 260.432(2), states:

> [N]o public employee shall solicit any money, influence, service or other thing of value or otherwise promote or oppose any political committee or promote or oppose the nomination or election of a candidate, the gathering of signatures on an initiative, referendum or recall petition, the adoption of a measure or the recall of a public office holder while on the job during working hours.[210]

Documents show that McCaig was concerned about the campaign and did not want to focus exclusively on Cover Oregon. The next day, on February 9, 2014, McCaig emailed Bonetto to suggest that the combined group have daily calls and weekly meetings.[211] She noted that they also needed to "get the campaign focused on bigger and very real items or we are going to get behind in that parallel universe which is as important."[212] She offered to "draft org chart with roles and responsibilities for this combined effort."[213] Bonetto responded "yes…sounds good... thx."[214]

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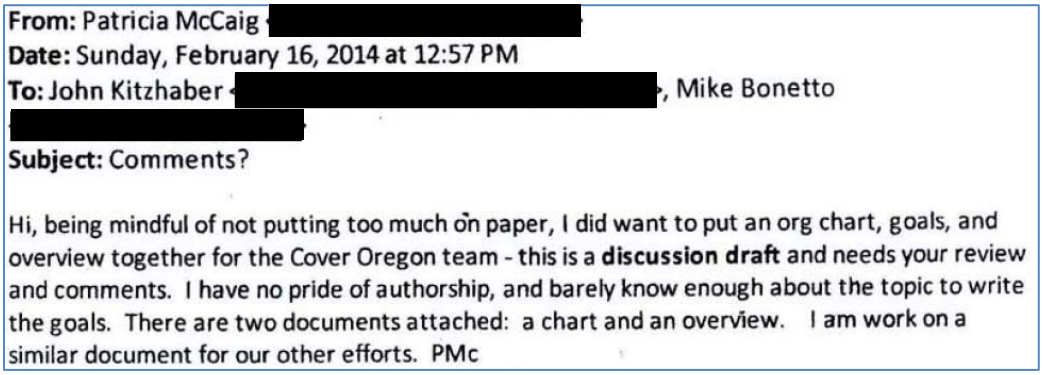
[208] *Id.* at 39.
[209] Bonetto, Tr. at 169.
[210] ORS § 260.432(2).
[211] Email from Patricia McCaig to Michael Bonetto (Feb. 9, 2014) (MBG2014995-96).
[212] *Id*.
[213] *Id*.
[214] Email from Mike Bonetto to Patricia McCaig (Feb. 9, 2014) (MBG2018970-71).

Eight days later, McCaig sent Kitzhaber and Bonetto a Cover Oregon SWAT team organizational chart and responsibilities overview for the Cover Oregon Team. In her email, she noted she was "being mindful of not putting too much on paper:"[215]



From: Patricia McCaig <[redacted]
Date: Sunday, February 16, 2014 at 12:57 PM
To: John Kitzhaber <[redacted]>, Mike Bonetto
<[redacted]>
Subject: Comments?

Hi, being mindful of not putting too much on paper, I did want to put an org chart, goals, and overview together for the Cover Oregon team - this is a **discussion draft** and needs your review and comments. I have no pride of authorship, and barely know enough about the topic to write the goals. There are two documents attached: a chart and an overview. I am work on a similar document for our other efforts. PMc

In this overview, McCaig directed that the SWAT Team would "Develop a communication strategy and plan to minimize website related issues and focus on successfully executing and supporting Cover Oregon's enrollment plan."[216] She also clarified that "The Cover Oregon SWAT team is a combined team of both public and private resources. Tim Raphael with lead the SWAT team."[217]

[215] Email from Michael Bonetto to John Kitzhaber, Patricia McCaig (Feb. 16, 2014) (McCaig Production PMc 0003-0005).
[216] *Id.*
[217] *Id.*

Swat Team Six-Week Goal:

Develop a communication strategy and plan to minimize website related issues and focus on successfully executing and supporting Cover Oregon's enrollment plan, including:

- Review enrollment plan, numbers, milestones and timeline;
- oversee and coordinate all communication/policy/implementation issues related to website enrollment and contracts;
- identify website related landmines, gather information, and prepare possible responses/outcomes;
- provide rapid response mechanism for website related issues; and
- help create "space" for a positive general enrollment narrative, determine if separate narrative supporting website enrollment is necessary.

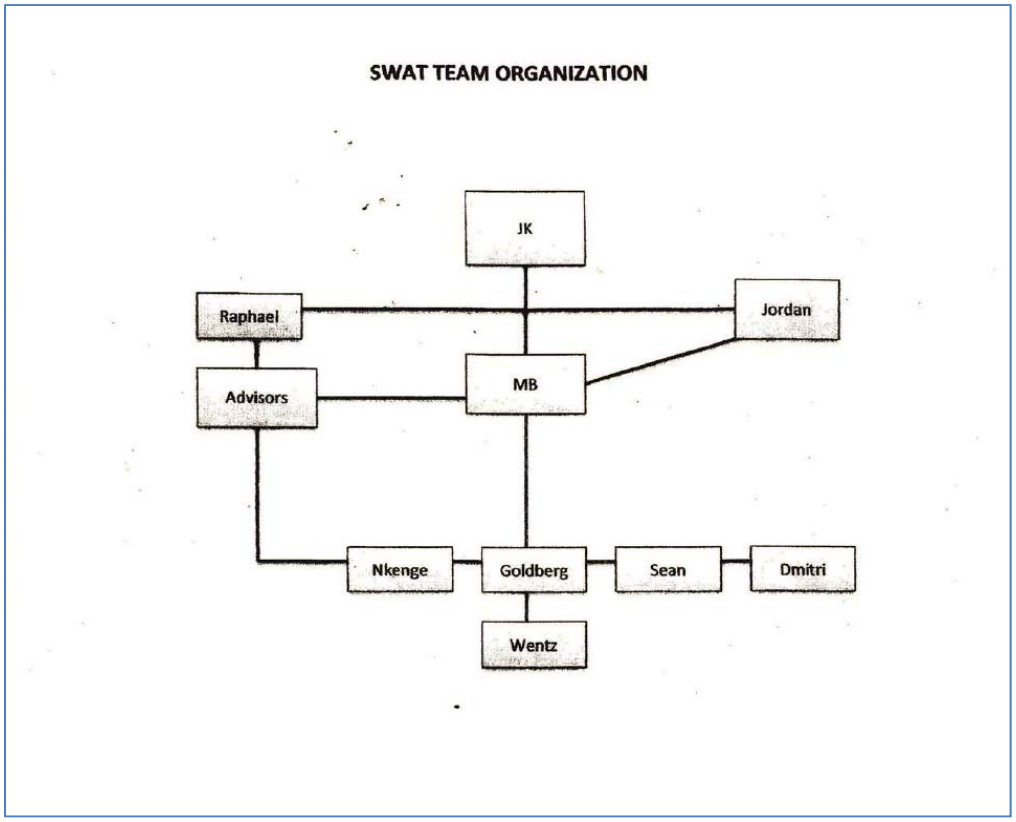
The Cover Oregon SWAT team is a combined team of both public and private resources. Tim Raphael with lead the SWAT team. As the project lead, he will be responsible for helping focus the development of a successful enrollment plan and identifying the critical path issues necessary to develop a successful communication strategy and plan to support the enrollment plan.

The project leader will manage the advisors' team, develop direction, coordinate with key governor's staff, provide the governor access with updated information and critical path issues, and focus/direct information gathering as required.

The governor's staff will provide support where appropriate and coordinate all related activities through the project lead/advisory team.

McCaig also provided a chart:[218]

[218] *Id.*



McCaig identified Raphael as the project leader responsible for developing a plan to enroll Oregonians in health care. McCaig advised that Raphael will provide the Governor with access to "critical path issues" and "develop direction."[219] One week earlier, McCaig advised, and the Governor had agreed, that Raphael should be paid by the campaign to manage issues regarding Cover Oregon.[220] Kitzhaber responded to McCaig's overview and organizational chart: "[t]his looks excellent. Thanks for putting the time into it."[221]

In response to a request for information about Raphael's work for the Governor's office and the Governor's re-election campaign, Raphael's lawyer told the Committee that Raphael worked as the communications director within the Office of the Governor from January 10, 2011 to November 20, 2013, and then went to work for a public affairs firm.[222] The public affairs firm was retained by the Governor's office as a consultant and Raphael served as a consultant in that capacity for one month, from January 1, 2014 to January 31, 2014.[223] Then, from February 1, 2014 to November 4, 2014, the public affairs firm was retained by Kitzhaber's campaign to serve as a communications consultant.[224]

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[219] *Id.*
[220] Email from Patricia McCaig to John Kitzhaber (Feb. 8, 2014) (McCaig Production PMc 00001-2).
[221] Email from John Kitzhaber to Patricia McCaig and Mike Bonetto (CONGJK000535).
[222] Email from Counsel for Tim Raphael to H. Comm. on Oversight & Gov't Reform Majority Staff, copying H. Comm. on Oversight & Gov't Reform Minority Staff (Jan. 29, 2016).
[223] *Id.*
[224] *Id.*

These documents show campaign staffers were positioned to exercise some degree of control over Cover Oregon, and to make health care policy decisions in Oregon. The majority of Tim Raphael's work was done after February 1, 2014—when he was a campaign employee.

With respect to the organizational chart and other materials that McCaig created, and the purpose of the SWAT team, Bonetto stated that the group primarily focused on communications issues. He testified:

> A. This was, I think, much more of a hypothetical, you know, structure. That it became much more informal on a daily or weekly basis. That this group was, you know, convened to really help on these day-to-day communication issues specific to Cover Oregon.
>
> * * *
>
> Q. So was the SWAT team purely working on messaging, or were they also then -- when you say "moving forward," did they have a role to play in determining what recommendation was brought to the Governor in terms of the IT decision?
>
> A. Yeah. I think, you know, what -- the words on this paper, you know, I – they are what they are. But, you know, I was in these meetings, and I would say, you know, the focus was on the communication strategy, and, you know, looking at -- I think Patricia was in a position to, you know, provide her two cents to the Governor on recommendations and, you know, he was doing that with a lot of folks of understanding the path forward.
>
> Q. And in the structure and responsibility sheet, she says this is a combined team of both public and private resources. Did you often -- was that referring to coordination between the campaign staff and the Governor's Office?
>
> A. And I would just, you know, for this -- you know, for this purpose, we really -- these were -- this was not a campaign, you know, process. These were, you know, unpaid, you know, advisers to the Governor to help on this specific issue.
>
> Q. But did you coordinate with your campaign staff in the Governor's Office on messaging issues?
>
> A. Well, again, I'm not calling them campaign staff. I'm calling them unpaid advisers for these specific issues. And, under that, I would confirm that, yes, I was doing that.
>
> Q. And would you say -- did most of the -- did any of the SWAT team

members also work on the Governor's campaign team?

A. Some did, yes.

Q. Do you know which ones? Did Patricia McCaig?

A. Over time, she did, along with Kevin Looper and Mark Wiener and Tim Raphael.[225]

Bonetto testified that the primary focus of the SWAT team was communications. Bonetto, however, reviewed, edited, and approved the "Cover Oregon SWAT Team: Goals, Structures and Responsibilities" document created by McCaig.[226] Bonetto kept McCaig's original language, including that the:

> Cover Oregon SWAT team is a combined team of both public and private resources. Tim Raphael with lead the SWAT team. As project lead, he will be responsible for helping focus the development of a successful enrollment plan and identifying the critical path issues necessary to develop a successful communication strategy and plan to support the enrollment plan.[227]

This placed Raphael in a position to participate in policy decisions—enrollment in the PPACA was a determinative factor in the success or failure of the exchange.

Bonetto testified that members of the SWAT team who were not employees of the state were "unpaid advisers." McCaig, however, testified that the campaign paid Raphael to work on issues for the Governor's office. She stated Raphael "was an outside adviser, who was being paid for by the campaign, who was coordinating all these volunteers' efforts to advise the Governor's office and the Governor."[228] In a deposition, McCaig testified that her primary purpose for assisting the Governor's office was to advise on communications issues. She stated:

Q. So you started working for the Governor and his chief of staff primarily in January 2014, you said in an unpaid advisory role. And what were your primary responsibilities when you started in that role?

A. 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.

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[225] Bonetto, Tr. at 171-73.
[226] Email from Michael Bonetto to John Kitzhaber, Patricia McCaig (Feb. 17, 2014) (MBG2000739-741).
[227] *Id*.
[228] McCaig, Tr. at 34.

> 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.[229]

Documents and testimony show the SWAT team was in fact a team of campaign advisers and staff from the Governor's office that focused on Cover Oregon issues. The SWAT team worked on communications issues for the Governor, but they were also included in discussions about substantive policy decisions, such as the preferred technology option for Cover Oregon. McCaig testified:

> Because the Governor had made it clear, and I felt this way personally as well, that we wanted to support Mike in his job. We wanted him to succeed in his job and have the confidence and the credibility of the people who were the Governor's trusted advisers, as well as his staff.
>
> And I wanted to make it clear to the Governor that I understood that that was his priority, and that helping Mike would be something that I could do in a thoughtful, not abrasive, larger-than-life kind of way. And that's what I meant by that.[230]

McCaig's testimony shows that, while she was believed herself to be primarily serving in a communications capacity, she was also advising Bonetto in his official capacity as the Governor's Chief of Staff. Goldberg testified:

> Q. Can you describe your understanding of Patricia McCaig's role as it relates to Cover Oregon?
>
> A. I can tell you what my understanding was. My understanding was, you know, Patricia had been brought into the governor's office by the governor to help at a time of a number of staff transitions that there had been transitions from -- in chief of staff, there were transitions in communications people. And Patricia was brought in to help with that.
>
> And one of the issues that she was helping with was the Cover Oregon issue.

---

[229] *Id*. at 15.
[230] *Id*. at 39.

Q. Did Patricia McCaig have an opinion on the technology options for Cover Oregon?

A. She had a lot of opinions about how to communicate things. I don't recall whether she had an opinion about what the options should be.[231]

Alex Pettit also testified that McCaig's role went beyond pure communications advice. With respect to McCaig's role as it relates to Cover Oregon, Pettit testified that she was an adviser to the Governor and that she often "challenged" him on things. Pettit stated:

Q. Then can you describe your understanding of Patricia McCaig's role as it relates to Cover Oregon?

A. So I had understood that she was an adviser to the governor. That was my extent that I understood, and the only thing that I had personally interacted with her on, although she would discuss with me things and challenge me on things, just discussion-type things or whatever. The only substantive changes that I feel she ever made was in my slide decks and communicating to the committee.

Q. What do you mean she would challenge you on things?

A. Well, when we would -- so she was the one that was -- she was one of the folks that was pushing hard for to look or take another look at -- I believe she was one of the ones pushing that, because -- this is all speculation on my part now. Because Maryland had decided to go the route of transferring Connecticut's exchange, I believe she was really the one getting Mike Bonetto to ask me, Well, why can't me [sic] do an exchange, why is it that we shouldn't an transfer exchange.

The Technology Options Workgroup had already come to the conclusion we're not doing that. You know, it was a risky thing. We would have to start all over, new hardware, new whatever, we're not doing it. Here it is in April and, Well, why aren't we doing it? Maryland decided to do it. Well, because it's a bad idea to do it.

So we were trying to -- so that was -- again, we came to the same conclusion anyway, that transferring somebody else's system was too costly and too risky and too crazy.[232]

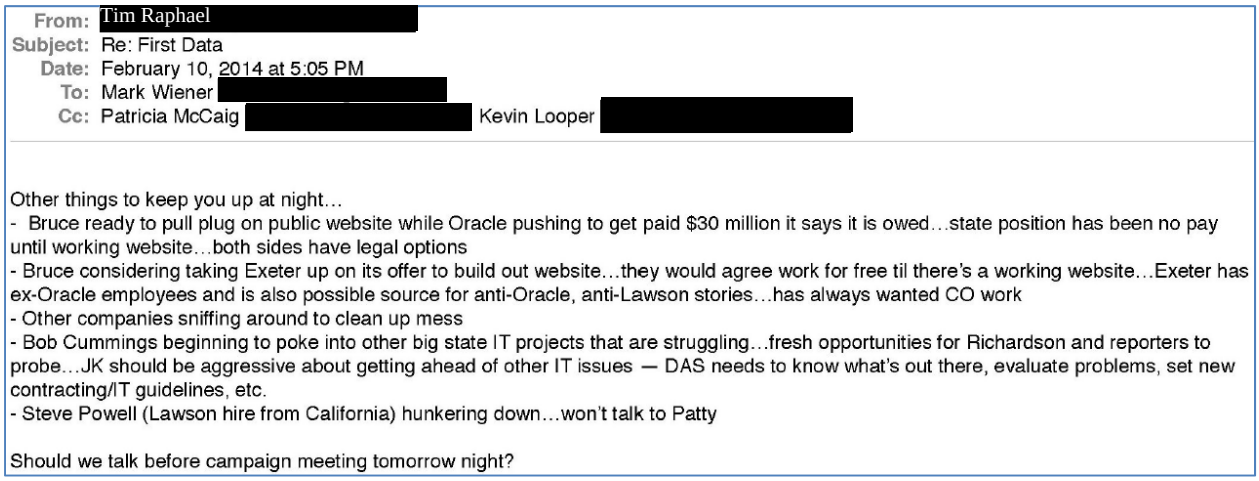
---

[231] Goldberg, Tr. at 105.
[232] Pettit. Tr. at 225-226.

After the aforementioned call with the Governor on February 7, 2014, and the multiple emails exchanged between Bonetto, McCaig, Kitzhaber, and others discussing the need for a combined effort, Raphael was immediately integrated into Cover Oregon discussions. Like McCaig, he was involved in both communications issues and policy decisions. On February 9, 2014, Raphael sent an email to McCaig, Mark Wiener, and copying Kevin Looper with a list of questions that needed to be answered about Cover Oregon. He told the group that he was having difficulty coming up with a work plan for Cover Oregon.[233] His questions ranged from Cover Oregon media issues to the status of Cover Oregon's budget.[234] Raphael also sent the list of questions to Dmitri Palmateer, the Legislative Director and Deputy Chief of Staff for Kitzhaber. He wrote: "Keep this to yourself . . . I may be re-engaging . . . Interested in your thoughts/additions to the piece below . . ."[235]

Palmateer responded: "This is exactly what we have been missing. We haven't been aggressive in coordination; there's a gap inside our office, a gap between OHA and Cover Oregon, a gap between us and cover Oregon, and we have a leak I believe inside Cover Oregon."[236]

On February 10, Raphael sent an email detailing Goldberg's thoughts about the future of the exchange. Raphael wrote to other campaign advisers about concerns with respect to Cover Oregon and other big state IT projects, and suggested that they talk. In his message, Raphael raised the possibility of Bob Cummings from the Legislative Fiscal Office (LFO) investigating other state information technology projects that are struggling.[237]



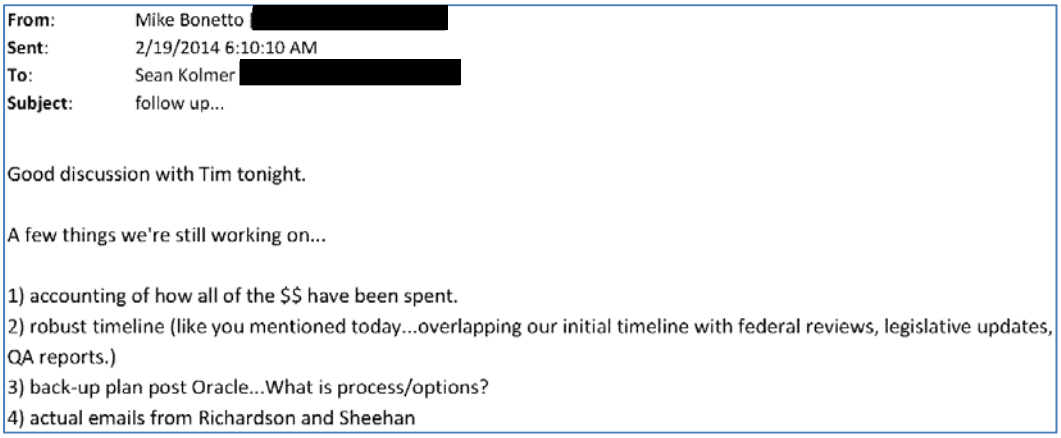
From: Tim Raphael [redacted]
Subject: Re: First Data
Date: February 10, 2014 at 5:05 PM
To: Mark Wiener [redacted]
Cc: Patricia McCaig [redacted] Kevin Looper [redacted]

Other things to keep you up at night…
- Bruce ready to pull plug on public website while Oracle pushing to get paid $30 million it says it is owed…state position has been no pay until working website…both sides have legal options
- Bruce considering taking Exeter up on its offer to build out website…they would agree work for free til there's a working website…Exeter has ex-Oracle employees and is also possible source for anti-Oracle, anti-Lawson stories…has always wanted CO work
- Other companies sniffing around to clean up mess
- Bob Cummings beginning to poke into other big state IT projects that are struggling…fresh opportunities for Richardson and reporters to probe…JK should be aggressive about getting ahead of other IT issues — DAS needs to know what's out there, evaluate problems, set new contracting/IT guidelines, etc.
- Steve Powell (Lawson hire from California) hunkering down…won't talk to Patty

Should we talk before campaign meeting tomorrow night?

[233] Email from Tim Raphael to Mark Wiener, Patricia McCaig, Kevin Looper (Feb. 9, 2014) (COGR_SHCBAR_KL_0122).
[234] *Id*.
[235] Email from Tim Raphael to Dmitri Palmateer (Feb. 10, 2014) (TR00659-660).
[236] *Id*.
[237] Email from Tim Raphael to Mark Wiener, Patricia McCaig, Kevin Looper (Feb. 10, 2014) (TR000583).

On February 19, 2014, Bonetto emailed Kolmer about his discussion with Raphael earlier in the evening.[238] Bonetto listed items that he and Raphael discussed earlier that evening, including "an accounting of how all the $$ have been spent" and a "back-up plan post Oracle."[239]



From: Mike Bonetto [redacted]
Sent: 2/19/2014 6:10:10 AM
To: Sean Kolmer [redacted]
Subject: follow up...

Good discussion with Tim tonight.

A few things we're still working on...

1) accounting of how all of the $$ have been spent.
2) robust timeline (like you mentioned today...overlapping our initial timeline with federal reviews, legislative updates, QA reports.)
3) back-up plan post Oracle...What is process/options?
4) actual emails from Richardson and Sheehan

In a deposition, Goldberg testified that he was asked to brief the Governor's campaign team with an update about Cover Oregon in February 2014. He stated:

> Q. Who did you have discussions with in the governor's office most frequently?
>
> A. Most frequently with, you know, Mike Bonetto, Sean Kolmer, and in February and March with Patricia McCaig. Those were my major contacts.
>
> Q. Did you talk to anybody else from the governor's office in that period?
>
> A. I'm sure I did, you know.
>
> Q. Did you talk to Kevin Looper?
>
> A. That's not from the governor's office.
>
> Q. Patricia McCaig was?
>
> A. Patricia McCaig was. But it's my understanding I did – Mr. Looper was part of a campaign team and I had one discussion with Mr. Looper and several others at some point in probably February, but I don't know the exact date.

[238] Email from Mike Bonetto to Sean Kolmer (Feb. 19, 2014) (MBG2045397).
[239] *Id.*

Q. What did you have a discussion with about with Mr. Looper?

A. I was asked to brief them on where things were with Cover Oregon.

Q. You were asked to brief the campaign team?

A. Yes.

Q. What were they interested in about Cover Oregon?

A. They want to know what was going on, how it was going, would -- you know, would what was my sense of when and how this would get fixed and, you know, just had a lot of questions about the website, how it was functioning, whether it was fixable, those kinds of things.

Q. Do you recall who from the campaign team attended this meeting?

A. It was on the telephone. So I don't know all the people that were on it. I do know two of the names, which were Kevin Looper and Mark Wiener, but other than that, I think the may have been one or two other people on the phone, but I don't recall.

Q. Do you know if Tim Raphael was on the call?

A. I don't know.

Q. Do you know if Sylvia [sic] Hayes was on the call?

A. I don't know.

Q. Do you know if Govern [sic] Kitzhaber was on the call?

A. No. Yes, I know the governor wasn't on the call.

Q. Was or was not on the call?

A. Was not on the call.

Q. Was Mike Bonetto on the call?

A. I don't know.

Q. Was Patricia McCaig on the call?

A. I don't know.

Q. Who were the only people that you do recall –

A. I recall there being Kevin Looper and Wiener. And, as I indicated, it was a phone call. There were several other people on the call. I don't recall who else.

Q. Who was it that asked you to brief this team?

A. I do not recall. Someone in the governor's office, the exact person, I don't know.

Q. Did they give you a purpose as to why the interim executive director of Cover Oregon would be briefing the governor's campaign team?

A. I think they had a lot of questions and felt I could answer them the best.[240]

2. Kitzhaber wanted to have his "ship in order going into battle"

The Governor and his political operatives grew increasingly concerned that Cover Oregon issues would enable the Governor's opponents to attack him in the upcoming election. These concerns manifested in early March 2014 when one of the Cover Oregon Board members, Aelea Christofferson, decided to publicly announce her decision to run against Greg Walden (R-OR) to represent Oregon's Second Congressional District in the U.S. House of Representatives. Aelea Christofferson emailed Mike Bonetto about her candidacy in December 2013. She said she wanted to coordinate her run against Rep. Walden with the Governor to avoid "the finger-pointing inevitability" regarding Cover Oregon.[241]

From: Aelea Christofferson <[redacted]
Sent: 12/31/2013 4:46:36 AM +0000
To: BONETTO Mike * GOV <[redacted]>
Subject: Congressional run
Attachments: image001.png

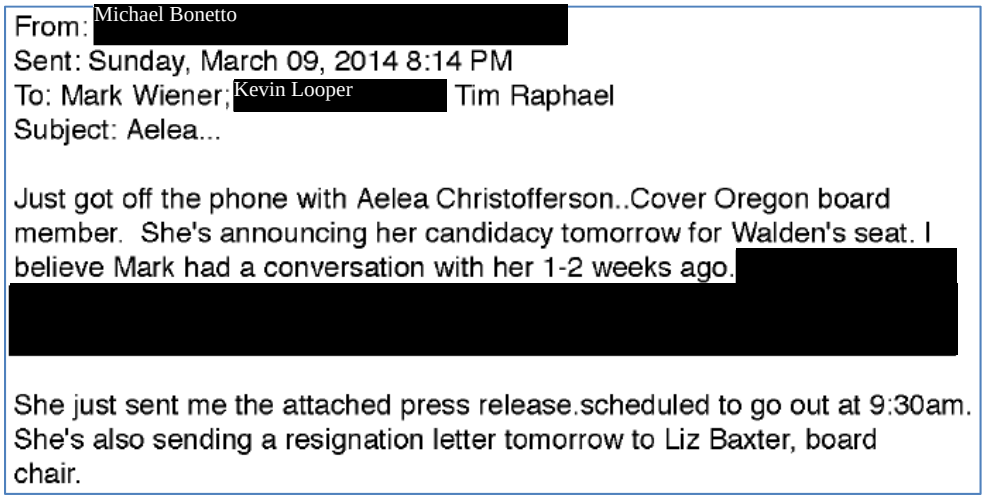
I have decided to run for Congress and will be announcing in the next couple of weeks. One of my concerns is that the governor and I might be treating the Cover Oregon issues in ways that put us in competition, not in concert. I don't know if having time to talk to the governor in person is even a possibility, but I would really like for us both to understand how the other is going to handle the top personnel question and the finger pointing inevitability. The board has been told a couple of time the "governors' office" doesn't want us to do one thing or another, but that has hung Cover Oregon board with things that we did not know or control.

[240] Goldberg, Tr. at 84-85.
[241] Email from Aelea Christofferson to Mike Bonetto (Dec. 31, 2013) (GOV_HR00061081-82).

* * *

Christofferson emailed Bonetto again on January 24, 2014 to notify him she was "becoming steadily more concerned about how to handle the major things that were withheld from the board, but the board is now getting hung with. I realize the Governor has a race in November, but so do I. I don't want us to be working against each other."[242]

The Governor's office was responsive to her request, and on March 9, 2014, Bonetto emailed some of the Governor's political operatives to discuss a conversation that he had with Aelea Christofferson.[243] Bonetto advised the group that Christofferson was preparing to resign from the Board.[244]



From: Michael Bonetto
Sent: Sunday, March 09, 2014 8:14 PM
To: Mark Wiener; Kevin Looper Tim Raphael
Subject: Aelea...

Just got off the phone with Aelea Christofferson..Cover Oregon board member. She's announcing her candidacy tomorrow for Walden's seat. I believe Mark had a conversation with her 1-2 weeks ago.

She just sent me the attached press release.scheduled to go out at 9:30am. She's also sending a resignation letter tomorrow to Liz Baxter, board chair.

Mark Wiener responded:

> Yes I did. I was not overly encouraging about her overall prospects and she said she understood; she claims she has goals that fall short of victory. I did say that she should get off the Cover Oregon Board as that would just provide a double guarantee that she will be nothing but the Cover Oregon Lady. Apparently Wheeler was telling her that she should stay on and use that as the platform to fight from. I did not make that up.[245]

Bonetto also sent an email to Kitzhaber letting him know that Aelea Christofferson would be running against Greg Walden. Kitzhaber responded that he was "very concerned that we do not have our ship in order" and identified some concerns about media coverage. He wrote:

> Thanks. I want you and I, Looper, Wiener, Curtis and Tim to meet tomorrow at 4:30. I will be at the campaign office. If you can be there great. Otherwise by

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[242] Email from Aelea Christofferson to Mike Bonetto (Jan. 24, 2014) (GOV_HR00058124-27).
[243] Email from Mark Wiener to Mike Bonetto, Kevin Looper, Tim Raphael (March 9, 2014) (TR000477).
[244] *Id.*
[245] *Id.*

> phone. I am very concerned that we do not have our ship in order going into battle. We are running out of time. Need a very candid conversation. We have almost no margin left to be reacting to this, to the NYT reporter, to the pending AP story on other IT problems in the administration. Let alone the First Data report. Happy to talk to Nkenge with you tomorrow. But want to limit the afternoon meeting to those mentioned above.[246]

Bonetto arranged the meeting that the Governor requested. He told Raphael, Curtis Robinhold, Kevin Looper, and Mark Wiener: "Governor would like to meet at 4:30 tomorrow at campaign office. He's quite concerned that we do not have our ship in order based on much of your recent feedback and would like a very candid conversation."[247]

3. Unclear reporting structure at Cover Oregon

In December 2013, Rocky King, then Executive Director of Cover Oregon, resigned. Bonetto worked with King and Goldberg before King resigned to discuss whether Goldberg should replace him at Cover Oregon.[248] In a deposition, with respect to how Goldberg was chosen to replace King as the interim Executive Director of Cover Oregon, Bonetto testified:

> So I think this was through a recommendation by the Governor to the Cover Oregon board where Bruce was brought in to help with the manual paper application process, since that was what he had a strong background with in terms of running the Medicaid organization. That's what they had done for many, many years. So Bruce was brought in to help coordinate that. Once -- which was in, I believe, December of 2013. And then Rocky King, I believe, went on medical leave beginning of the first of the year of 2014, and then the board put Bruce in charge as, I believe, it was director or interim director.[249]

While at Cover Oregon, Goldberg frequently turned to the Governor's office for advice. For example, in early March 2014, when Goldberg established a Technology Options Workgroup to provide Cover Oregon leadership with expert advice on the development and operation of its IT platform,[250] he emailed Governor Kitzhaber and his staff about the group.[251] Goldberg told Kitzhaber, copying Bonetto, that:

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[246] Email from Mike Bonetto to John Kitzhaber (March 10, 2014) (MBG2047421).
[247] Email from Mike Bonetto to Tim Raphael, Curtis Robinhold, Kevin Looper, Mark Wiener (March 9, 2014) (MBG2025260).
[248] Email from Rocky King to Bruce Goldberg, Mike Bonetto (Nov. 29, 2013) (GOV_HR00018794-800); Email from Mike Bonetto to Bruce Goldberg (Nov. 24, 2013) (MBG2044682); *See also* Email from Mike Bonetto to Bruce Goldberg, Sean Kolmer, Patty Wentz, Tina Edlund (Sept. 18, 2013) (MBG2044688).
[249] Bonetto, Tr. at 177-178.
[250] *See* Attachments to Email from Mike Bonetto to Tim Raphael, Kevin Looper, Mark Wiener, Patricia McCaig, Nkenge Harmon Johnson, Dmitri Palmateer (April 2, 2014) (MBG2001374-77); Attachment to Email from Mike Bonetto to Patricia McCaig, Tim Raphael (April 23, 2014) (MBG2000277-305); Email from Laura Hutchings to John Kenagy, Aaron Patnode, Liz Baxter, Sue Hansen, Gregory Van Pelt, B. Peacock, John Cimral, Amy Acree, J. Burpo, George Brown, Bruce Wilkinson, Chris Blanton, Robin Richardson, Erick Doolen, M. Lane, Tom McKivor,

> You had indicated wanting to participate. Would also suggest that I send you all materials the group will be reviewing, that Sean could attend, and that he and I could brief you once a week. Let me know your preference. Regardless, I think it would be beneficial for all of us to get together next week to discuss potential scenarios so I can be sure I know any preferences you may have.[252]

Bonetto forwarded the email to Raphael, noting that Kitzhaber and Goldberg planned to meet to allow the Governor to "review and approve the list and process."[253] Raphael responded, "who chairs this group?"[254] Bonetto said: "I'll check . . . do we have a preference?"[255] Raphael responded, "above my pay grade . . . external with some gray hair would be good."[256]

The Governor of Oregon's authority extends to appointing and removing Cover Oregon Board members.[257] The Executive Director of Cover Oregon served at the pleasure of the Board and the Executive Director controlled the employment of other Cover Oregon employees. The February 2012 Board Policy Manual stated that the "Executive Director is the Board's only link to operational achievement and conduct, so that all authority and accountability of employees, as far as the Board is concerned, is considered the authority and accountability of the Executive Director."[258] The February 2012 Board Policy Manual also stated that the "Board will never give instructions to persons who report directly or indirectly to the Executive Director" and "the Board will not evaluate, either formally or informally, any employees other than the Executive Director."[259] Kitzhaber and his political operatives, however, were often involved in the process to select and remove Cover Oregon employees.

In preparation for the release of the First Data report in March 2014, the Governor's office was involved in numerous conversations about staffing changes at Cover Oregon. The Governor's office engaged in discussions about replacing the Executive Director and other Cover Oregon employees, despite the fact that the Executive Director of Cover Oregon served at the pleasure of the Board of Directors, not the Governor.[260]

On March 20, 2014, when the First Data report was released, Kitzhaber called for the resignation of the Chief Information Officer at Cover Oregon, Aaron Karjala, and the Chief

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Alex Pettit, John Cvetko, Triz delaRosa, Galen Gamble, Bruce Goldberg, Aaron Karjala, Richelle Borden, Sean Kolmer, Tina Edlund, Joli Whitney (March 25, 2014) (GOV_HR00080320- 27).

[251] Email from Bruce Goldberg to Mike Bonetto (March 11, 2014) (GOV_HR00081042-45).

[252] *Id*.

[253] Email from Mike Bonetto to Tim Raphael (March 7, 2014) (MBG2049919).

[254] Email from Mike Bonetto to Tim Raphael (March 11, 2014) (MBG2049838-39).

[255] *Id*.

[256] Email from Tim Raphael to Mike Bonetto (March 10, 2014) (TR000534).

[257] ORS § 741.025.

[258] Oregon Health Insurance Exchange Corporation, *Board Policy Manual, Policy Type: Board-Management Delegation, Policy Title 4.2. Accountability of the Executive Director,* at 18 (last updated February 2012).

[259] *Id*.

[260] ORS § 741.201(1),(3).

Operating Officer, Triz delaRosa, and announced the resignation of Goldberg.[261] These decisions were in the works for several weeks. On March 6, 2014, the Governor's political operatives discussed the idea of the Governor asking for "letters of resignation for all senior management at Cover Oregon and OHA effective May 1, with a plan to meet with each of them and determine who stays."[262] On March 17, 2014, Cylvia Hayes emailed Kitzhaber and told him: "I thought we were going to fire Bruce (I think, unfortunately, this has to happen)."[263]

Documents show that firing Goldberg had been discussed before March 2014. In a January 21, 2014 email to the Governor, Raphael wrote:

> Patricia and I talked earlier, and I think she has now connected with you. We are in the same place . . . . I don't think it is time to remove people . . . getting rid of Bruce does not help fix the website . . . we need the website or an alternative with specific date for action . . . at that date, depending on where things stand, it may be time for more leadership changes . . . ."[264]

In a deposition, Goldberg testified about who he spoke to about possibly resigning from Cover Oregon. He stated:

> Q. Did anyone ask you that you should leave Cover Oregon or resign?
>
> A. No. I had tendered my resignation. I had offered to resign multiple times over the years for a number of reasons and this time my resignation was accepted.
>
> Q. There were no discussions before March 20, 2014 with you about potentially stepping down?
>
> A. I raised the issue.
>
> Q. Who did you raise the issue to?
>
> A. I raised the issue with both, Mike Bonetto and Patricia McCaig.
>
> Q. Why did you raise the issue with Patricia McCaig?
>
> A. I raised the issue with Patricia McCaig because she was helping work in the governor's office around issues of communication and transition and I talked to her on a number of occasions and so I talked to her about that as well.[265]

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[261] Gosia Wozniacka, *Gov. John Kitzhaber seeks Cover Oregon shake-up*, THE WASHINGTON TIMES (March 20, 2014).
[262] Email from Tim Raphael to Dmitri Palmateer (March 6, 2014) (TR000476).
[263] Email from Cylvia Hayes to John Kitzhaber (March 17, 2014) (CONGJK001185).
[264] Email from Tim Raphael to John Kitzhaber (Jan. 21, 2014) (CONGJK000078).
[265] Goldberg, Tr. at 13.

With respect to Goldberg's resignation, McCaig testified the Governor asked him to resign. She stated:

> Q. Okay. Thank you. Do you recall why Bruce Goldberg resigned in March 2014?
>
> A. I do.
>
> Q. Do you know? Why did he resign?
>
> A. He was asked to resign by the Governor.
>
> Q. Did you talk to the Governor, before he was asked to resign, about Bruce Goldberg potentially resigning?
>
> A. I did.
>
> Q. What did you talk to the Governor about?
>
> A. Bruce Goldberg was his friend. And it was really a hard discussion.
>
> Q. Did you make a recommendation to the Governor?
>
> A. No. I didn't.[266]

Two of the Governor's campaign advisers, McCaig and Raphael, expressed concerns that keeping Goldberg at Cover Oregon for a transition period after they accepted his resignation would not be good from a communications perspective. Bonetto stated that McCaig and Raphael were "nervous about anything that might entail a new contract for Bruce."[267]

[266] McCaig, Tr. at 27-28.
[267] Email from Sean Kolmer to Mike Bonetto (April 18, 2014) (MBG2008708).

From: Sean Kolmer [redacted]
Sent: 4/18/2014 12:25:13 PM
To: Mike Bonetto [redacted]
Subject: Re: Bruce's resignation letter

I thought we have always been clear this is Clyde's call. Frankly we need him during this time and that letter for him at Cover Oregon was always about himw staying until a new Ed is on board and the transition time is good. He is not the face of this anymore and I don't see the problem.

On Apr 17, 2014 10:32 PM, "Michael Bonetto [redacted] wrote:
Fyi...something that Patricia and discussed was Bruce's involvement moving forward. She and Tim are very nervous about anything that might entail a new contract for Bruce (like Clyde mentioned today). Since there's no effective date to Bruce's resignation letter...I don't see why we couldn't craft something with Clyde that makes it effective May xx.

Kolmer responded: "I thought we have always been clear this is Clyde [Hamstreet's] call. Frankly we need him during this time and that letter for him at Cover Oregon was always about himw [sic] staying until a new Ed is on board and the transition time is good. He is not the face of this anymore and I don't see the problem."[268]

In a deposition, McCaig testified about her concerns with respect to keeping Goldberg around. She stated:

> Q. I was asking if at any point, you were nervous about Bruce Goldberg continuing to stay involved in Cover Oregon?
>
> A. And he announced very clearly, he announced at that press conference that he was resigning. He said it as a statement, as a direct and –
>
> Q. At what press conference?
>
> A. The press conference where he was announcing the results of the First Data report. And there was a whole list of items that he was reporting on. And he concluded in that press statement or in that press conference with the statement that Bruce Goldberg was going to resign. And immediately or soon after, there was a conversation among different people that, perhaps, Bruce would be staying on. And I think I raised a concern immediately about that in terms of communications.
>
> That, at this point, when the Governor goes forward and tells the world that somebody is going to resign, that doesn't mean that maybe they're going to stick around for 6 weeks, or can get a separate contract or do something like that. So I did, I believe I

[268] *Id.*

weighed in and said in terms of communications, you need to be aware that it diminishes in many ways the clarity of your message and raises questions about how serious you are about this.

Q. And you said others had talked about keeping Bruce Goldberg on. Do you know why they potentially wanted to keep him around?

A. Oh, because he was really talented and really good. And we were all drinking from a firehose at the whole -- the Governor's office, the Cover Oregon board, and the Oregon Health Authority. They had people who were losing their jobs. They were manually trying to enroll people. They were looking for paths to go forward. I mean, it was topsy-turvy.[269]

The Governor and his political operatives were heavily involved in the process of selecting Clyde Hamstreet to replace Goldberg as Executive Director at Cover Oregon:

- On April 3, 2014, Clyde Hamstreet reached out to Kitzhaber and asked for guidance on Kitzhaber's objectives for Cover Oregon and the scope of work the Governor wanted completed by Hamstreet.[270] The next day, Goldberg set up a call between members of the Board of Directors at Cover Oregon, Clyde Hamstreet, and the Kitzhaber's team to "walk through and finalize plans for Hamstreet engagement: scope, timing, roll out."[271]

- On April 4, 2014, Bonetto emailed McCaig saying he thought "we have a 2 step decision process at the moment: 1) How to handle Hamstreet contract and Bruce's exist . . . and 2) Decision on IT platform."[272] With regard to how to handle the Hamstreet contract, Bonetto said "I've talked with Bruce and he's ready to step down next week if that's final decision . . . and to stay 1-2 weeks for any transition if needed."[273] He also said that while members of the Board would "present the Hamstreet contract and transition at the board meeting and ask for board approval," the "[b]ottom line [was that] – Clyde will take his lead from Governor . . . so if we want Bruce to step down next week – and have the Board own the contact . . . we should have Governor call Clyde after our 11:15 call."[274] McCaig responded "All tracking. Phew. Thanks."[275]

- On April 7, Bonetto forwarded McCaig a copy of the Hamstreet Advisory Services Contract and said: "Just took a quick read over this – it has some new pieces based on Friday's discussion. Jordan was going to provide new language on indemnification issue and George was going to make sure reporting structure and board oversight looked

[269] McCaig, Tr. at 29-31.
[270] Email from Clyde Hamstreet to John Kitzhaber (April 4, 2014) (GOV_HR00041293-94).
[271] Email from Clyde Hamstreet to Bruce Goldberg, Mark Schmidt, copying George Brown, Liz Baxter, Mike Bonetto (April 4, 2014) (GOV_HR00049762-63).
[272] Email from Patricia McCaig to Mike Bonetto (MBG2006793-95).
[273] *Id*.
[274] *Id*.
[275] *Id*.

good to him. Let me know if the team has any edits and I'll make sure to get those fed into the process."[276] These activities related to the Executive Director's contract extended beyond the scope of what McCaig and Bonetto described as the role of McCaig and the other unpaid advisers—to advise on communications.

- On April 8, 2014, attorneys in the Health and Human Services Section of the Oregon Department of Justice advised Liani Reeves, Bonetto, and Judith Anderson on the Clyde Hamstreet contract.[277] Bonetto forwarded the email to McCaig and said: "We'll need to figure out a way through this tomorrow."[278] McCaig responded, "Yes. Just read it."[279]

- On April 10, 2014, before the Board meeting to vote on Hamstreet as interim Executive Director of Cover Oregon,[280] McCaig sent Dmitri Palmateer and Michael Bonetto talking points about the Clyde Hamstreet contract with the note: "FYI need help with a few and who will respond."[281] The document included talking points for a Cover Oregon Board member, George Brown, and a Question and Answer section for Kitzhaber. They worked on the talking points throughout the day. McCaig said she wanted "to make sure that Clyde and Governor's response similar."[282]

The documents show McCaig was heavily involved in discussions about bringing on Clyde Hamstreet as the Executive Director of Cover Oregon. McCaig, however, testified:

> Q. Did you work with the Governor's office at all in helping decide whether Clyde Hamstreet should serve as the director at Cover Oregon?
>
> A. No. I was involved with how the announcement was going to be communicated.[283]

The documents show Bonetto turned to McCaig for advice and edits on the Hamstreet Advisory Services Contract and how to work through other contract issues, among other things. Documents show Bonetto, who had no authority over the Hamstreet contract, used his personal relationship with the leadership team at Cover Oregon to enable McCaig and the Governor's other political operatives to influence the process.

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[276] Email from Patricia McCaig to Michael Bonetto (April 7, 2014) (MBG2003161).
[277] Email from Patricia McCaig to Michael Bonetto (April 8, 2014) (McCaig October 5, 2015 Production 362).
[278] *Id*.
[279] *Id*.
[280] Oregon Health Insurance Exchange Corporation Board of Directors' Meeting, Minutes (April 10, 2014); *See* Email from Liani Reeves to Dmitri Palmateer (August 25, 2014) (GOV_HR00016464-86).
[281] Email from Patricia McCaig to Dmitri Palmateer, Michael Bonetto (April 10, 2014) (McCaig October 15, 2015 279-283).
[282] Email from Patricia McCaig to Rachel Wray, copying Mike Bonetto and Dmitri Palmateer (April 10, 2014) (MBG2006120-21).
[283] McCaig, Tr. at 125-26.

The official contract stated that Clyde A. Hamstreet & Associates and Clyde Hamstreet individually have been "retained by you, the Oregon Health Insurance Corporation," and that "Clyde Hamstreet, as delegated by the Cover Oregon Board shall perform the duties of and have the powers of the Cover Oregon Executive Director pursuant to ORS 741.201 and subject to policy direction by Cover Oregon's Board."[284] As discussed in the next section, contrary to the terms of the contract and Oregon law, documents and testimony show Hamstreet and his colleagues received direction from the Governor and his political operatives.

These transitions during a tumultuous time and the lack of clarity regarding who was ultimately responsible for choosing and overseeing the Executive Director at Cover Oregon resulted in unclear lines of authority. The April 4 email from Bonetto to McCaig states: "[b]ottom line [was that] – Clyde will take his lead from Governor . . so if we want Bruce to step down next week – and have the Board own the contact . . . we should have Governor call Clyde after our 11:15 call."[285]

Documents and testimony show Goldberg and Clyde Hamstreet often reported to the Governor's office and sought advice and direction from the Governor's office even though under Oregon law, the Executive Director served at the pleasure of the Board of Directors.[286]

4. Technology Options Workgroup's preliminary recommendation

Documents show the Governor's political operatives became increasingly concerned about Cover Oregon and the technology decision. Raphael, who was being paid by the campaign, led many of these conversations. Bonetto testified that the involvement of Raphael, McCaig, Mark Wiener, and Kevin Looper in Cover Oregon issues was primarily to assist with "crisis communications."[287] Documents show, however, that their role went beyond crisis communications, especially with respect to the technology decision for Cover Oregon.

On March 20, 2014, when the First Data report was released, Kitzhaber called for the resignation of the Chief Information Officer at Cover Oregon, Aaron Karjala, and the Chief Operating Officer, Triz delaRosa, and announced the resignation of Goldberg.[288] Around 7:00 p.m. on March 20, Raphael emailed Bonetto, copying Wiener and Looper, and asked for a 7:00 a.m. debrief the next day.[289] Afterwards, Raphael sent McCaig an email summarizing their discussion.[290]

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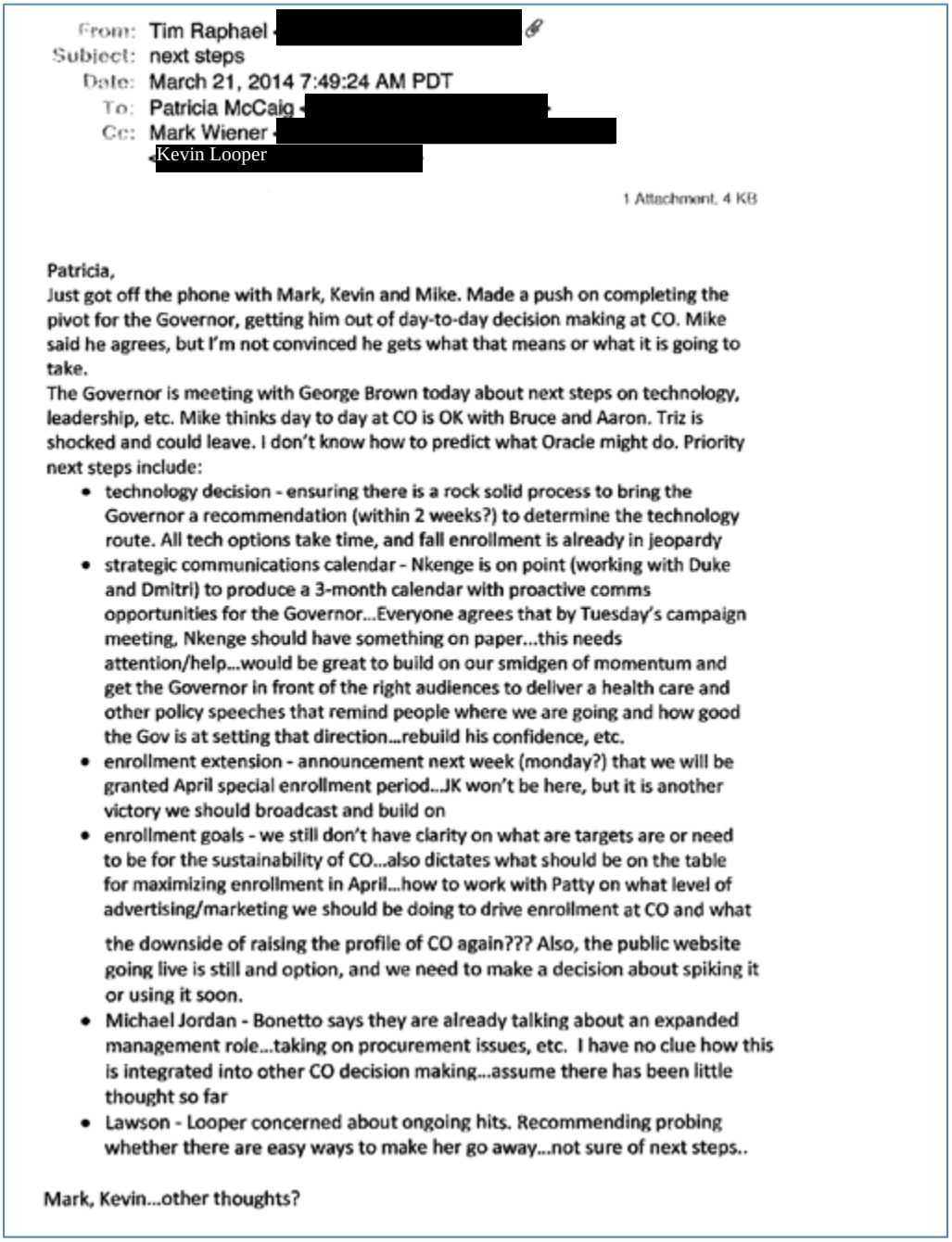
[284] Email from Liani Reeves to Dmitri Palmateer (August 25, 2014) (GOV_HR00016464-86).
[285] Email from Mike Bonetto to Patricia McCaig, Re: observations (April 4, 2014) (MBG2006793-95).
[286] ORS § 741.201(1),(3).
[287] Bonetto, Tr. at 37-38.
[288] Gosia Wozniacka, *Gov. John Kitzhaber seeks Cover Oregon shake-up*, THE WASHINGTON TIMES (March 20, 2014).
[289] Email from Mike Bonetto to Tim Raphael, copying Mark Wiener and Kevin Looper (March 21, 2014) (MBG2047409).
[290] Email from Tim Raphael to Patricia McCaig, Mark Wiener, Kevin Looper (March 21, 2014) (McCaig October 5, 2015 Production 116).



From: Tim Raphael [redacted]
Subject: next steps
Date: March 21, 2014 7:49:24 AM PDT
To: Patricia McCaig [redacted]
Cc: Mark Wiener [redacted]
Kevin Looper [redacted]

1 Attachment, 4 KB

Patricia,
Just got off the phone with Mark, Kevin and Mike. Made a push on completing the pivot for the Governor, getting him out of day-to-day decision making at CO. Mike said he agrees, but I'm not convinced he gets what that means or what it is going to take.
The Governor is meeting with George Brown today about next steps on technology, leadership, etc. Mike thinks day to day at CO is OK with Bruce and Aaron. Triz is shocked and could leave. I don't know how to predict what Oracle might do. Priority next steps include:

- technology decision - ensuring there is a rock solid process to bring the Governor a recommendation (within 2 weeks?) to determine the technology route. All tech options take time, and fall enrollment is already in jeopardy
- strategic communications calendar - Nkenge is on point (working with Duke and Dmitri) to produce a 3-month calendar with proactive comms opportunities for the Governor...Everyone agrees that by Tuesday's campaign meeting, Nkenge should have something on paper...this needs attention/help...would be great to build on our smidgen of momentum and get the Governor in front of the right audiences to deliver a health care and other policy speeches that remind people where we are going and how good the Gov is at setting that direction...rebuild his confidence, etc.
- enrollment extension - announcement next week (monday?) that we will be granted April special enrollment period...JK won't be here, but it is another victory we should broadcast and build on
- enrollment goals - we still don't have clarity on what are targets are or need to be for the sustainability of CO...also dictates what should be on the table for maximizing enrollment in April...how to work with Patty on what level of advertising/marketing we should be doing to drive enrollment at CO and what the downside of raising the profile of CO again??? Also, the public website going live is still and option, and we need to make a decision about spiking it or using it soon.
- Michael Jordan - Bonetto says they are already talking about an expanded management role...taking on procurement issues, etc. I have no clue how this is integrated into other CO decision making...assume there has been little thought so far
- Lawson - Looper concerned about ongoing hits. Recommending probing whether there are easy ways to make her go away...not sure of next steps..

Mark, Kevin...other thoughts?

McCaig testified in a deposition about what she thought Raphael meant by the comment: "we need to make a decision about spiking it or using it soon:"[291] She stated:

Q. On the 4th bullet point down, Tim Raphael, towards the end of the

[291] McCaig, Tr. at 97-98.

bullet point, says: Also the public Web site going live is still an option and we need to make a decision about spiking it or using it soon.

A. Uh-huh.

Q. So what does he mean we need to make decision about spiking it or using it?

A. I think it's a discussion in March about the information that we're getting from other people about what the strengths and weaknesses of it are. At that point, they don't know all of the costs, they don't know all of the bugs. There's lots of conversation about it in the paper. I think there are articles that are using language like whether we should go with it or not go with it.

And I think he's just reflecting that that's a common perception that somebody is going to need to make a decision about it because it's time consuming and what are we going to do? It's not a unique discussion at that point.

Documents show that the next day, Kitzhaber told Bonetto he would make the decision about the future of the exchange.[292]

[292] Email from John Kitzhaber to Mike Bonetto (March 22, 2014) (MBG2040875-78).

From: John Kitzhaber [redacted]
Sent: 3/22/2014 5:38:30 PM
To: Mike Bonetto [redacted]
Subject: Internal Advisory

Mike,

I met with George Brown and Liz Baxter on March 14. I assume they were reflecting the views of the Technology Team when they said that there is no leadership at Cover Oregon; there is a lack of trust and confidence at both the CCO and CIO level. I was at once urged to discharge them both and warned that firing them without having ready replacements could further undermine an already dysfunctional organization.

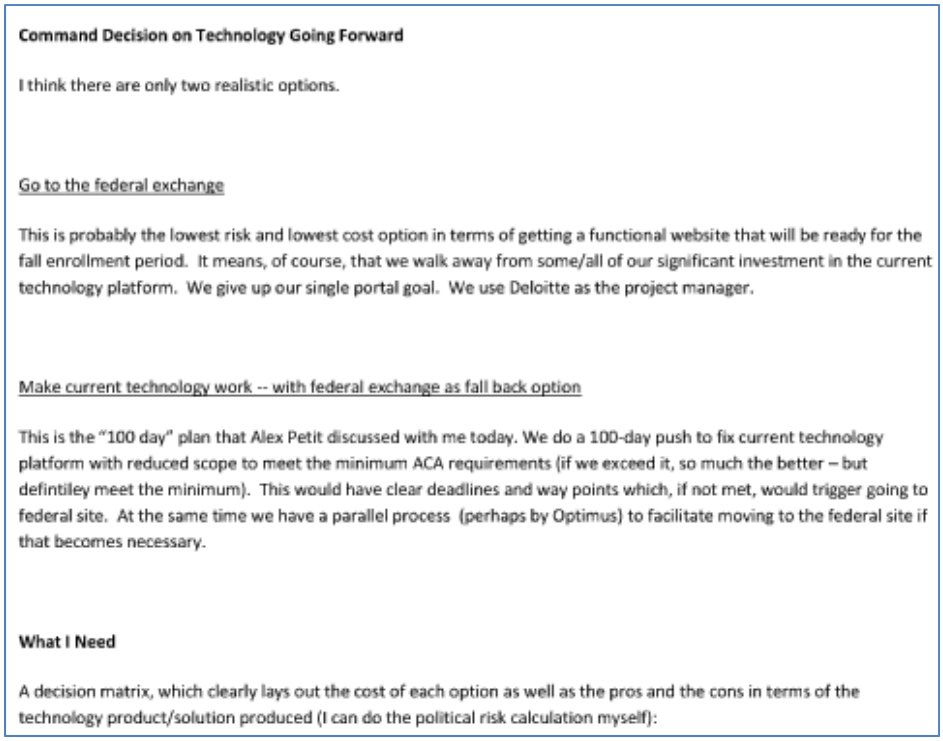
The plan was to discharge them but to bring in a "back up team." This has not come together and yet Thursday I made the announcement to replace the COO and CIO. I have been stewing on all of this since our meeting yesterday morning. I feel like I am getting conflicting view points and advice from many quarters (all well intentioned) and that there is no clear pathway to a definitive decision.

I am not going to second guess the decision to replace the CIO and COO. That needed to happen. More importantly, however, there needs to be one clear and accountable decision-maker about our course going forward. And it is clear to me that I am the one who will have to make that decision after weighing the risks involved with various courses of action.

One of reasons we got where we are today is because there was not a single decision-maker or a single point of accountability. Right now we are perpetuating that exact same problem within Cover Oregon that led us into this morass in the first place. We are not going to let that happen again.

I have no desire or intention of trying to micro-manage the project itself but I do have to make the macro decision and be accountable for it so that the project can move forward. Therefore, what I need is a clear pathway to an informed decision. Here is what I think that looks like.

* * *



Command Decision on Technology Going Forward

I think there are only two realistic options.

Go to the federal exchange

This is probably the lowest risk and lowest cost option in terms of getting a functional website that will be ready for the fall enrollment period. It means, of course, that we walk away from some/all of our significant investment in the current technology platform. We give up our single portal goal. We use Deloitte as the project manager.

Make current technology work -- with federal exchange as fall back option

This is the "100 day" plan that Alex Petit discussed with me today. We do a 100-day push to fix current technology platform with reduced scope to meet the minimum ACA requirements (if we exceed it, so much the better – but defintiley meet the minimum). This would have clear deadlines and way points which, if not met, would trigger going to federal site. At the same time we have a parallel process (perhaps by Optimus) to facilitate moving to the federal site if that becomes necessary.

What I Need

A decision matrix, which clearly lays out the cost of each option as well as the pros and the cons in terms of the technology product/solution produced (I can do the political risk calculation myself):

* * *

The Governor stated "I am the one who will have to make that decision after weighing the risks involved with various courses of action." The Governor requests a decision matrix laying out the cost of each option, as well as the benefits and disadvantages of each option, and notes that he will do the political risk calculation himself—for a decision that rested by law with the Cover Oregon Board. Bonetto testified that the Governor did not have the authority to make the technology decision for Cover Oregon. He stated:

> Q. I was just wondering if you or anyone in the Governor's Office reviewed the Governor's legal authority to make decisions about Cover Oregon?
>
> * * *
>
> A. No. . . . I guess, from our perspective, the decision was from the Cover Oregon board.
>
> * * *
>
> I think the answer would be no, because, again, we never looked at the Governor making that decision. The decision was through the Cover Oregon board.[293]

[293] Bonetto, Tr. at 20-21.

Bonetto also stated that the Board was responsible for Cover Oregon decisions. He testified:

> Q. Okay. And then how did the Oregon health insurance exchange actually get created? It was through that legislation?
>
> A. It was -- I believe it was a quasi-public corporation that was set up that was kind of outside of traditional State government.
>
> Q. And do you recall what authority was given to the Governor over Cover Oregon through the legislation establishing the exchange?
>
> A. I believe he had the authority to appoint the initial board, and I believe possibly the initial executive director, all based upon senate confirmation.
>
> Q. So who was responsible for any decisionmaking about Cover Oregon under the Oregon legislation?
>
> A. That would be the board.
>
> Q. The full position and the authority of the board was to make the decisions about the future of Cover Oregon?
>
> A. Correct.[294]

Bonetto testified that he believed the Governor did not have the legal authority to make the technology decision and did not view the Governor as making the decision. Documents show, however, that Bonetto responded to Kitzhaber's email (that stated "I am the one who will have to make that decision after weighing the risks involved with various courses of action") by reaching out to Goldberg and Kolmer to request information about the technology options and to tell them that the Governor felt like the technology decision would be his.[295] Bonetto also told the Governor he "liked the way [he] framed [his] earlier email around the upcoming decision and the need for leadership changes."[296]

[294] Bonetto, Tr. at 176-177.
[295] *See* Email from Bruce Goldberg to Mike Bonetto, copying Sean Kolmer (March 24, 2014) (MBG2028022-23).
[296] Email from Mike Bonetto to John Kitzhaber (March 23, 2014) (CONGJK001264-65).

To: John Kitzhaber [redacted]
From: Bonetto [redacted]
Sent: 2014-03-23T06:44:35Z
Subject: Follow up thoughts..
Received: 2014-03-23T06:44:57Z

Governor -
I like the way you framed your earlier email around the upcoming decision and the need for leadership changes. Below are some thoughts that I've been thinking about.

Technology Decision:
I think what you put down as the System Objective for the decision is very fair…but I'm not sure it gets us all the way to where you need the organization to be.

Let me explain. For the next 2-3 years there is a high likelihood that this period of Cover Oregon (specifically this initial open enrollment period) will be an albatross around the administration's neck -- whether we move to the federal exchange or keep it ourselves. But what I believe is essential is that we don't lose focus of your vision…and your legacy around health system transformation -- which includes both the delivery system….and the marketplace. [And you certainly did mention that your overarching policy objective is to deliver better care at lower cost.]

But what this means is that we should be doing everything possible to ensure that we are laser-focused on achieving transformation…period. This means that we need a Cover Oregon team that is solely focused on moving the marketplace….not on an IT platform that is going to be highly scrutinized over the next several years. Not on worrying about enrollment numbers and sustainability. Not on whether or not they're providing appropriate level of customer service. These haven't developed as core competencies over the past few years…and I don't expect them to develop now.

You systematically began transformation through CCOs….now with PEBB…and soon with OEBB. This will begin to move the market. We now need a savvy team at Cover Oregon who will be there to:
1) understand the industry and your vision
2) analyze the right data (quality and performance)
3) create the appropriate certification process that aligns with our care model.

This could mean a team of 8-12 who do nothing but focus on this…with board oversight. I still see the need for a very strong and respected Exec Director who will have the leverage to work with the industry and embed those care model attributes into the certification process.

Anyway… something to think about. I just don't want to lose sight of this with the upcoming decision. My concern is that narrowing the focus of any System Objective that may exclude maximizing health system transformation could jeopardize both vision and legacy.

Next Steps:
- I talked with Bruce today and he'll be getting us a refined matrix (with the core pieces you highlighted in your email) to us by Monday. I also talked with Tina yesterday and she is putting together some numbers that show how the current investment is working on the Medicaid eligibility side…and the potential ROI moving forward.
- I recommend that we schedule a Tuesday call with you, Bruce, Sean, me…and possibly Greg and George to walk through the matrix so we're clear on options.
- The Tech Team is already scheduled to meet again on Thursday (I believe primarily due to calendar conflicts with members). Depending on your availability…this could be a good time for you to attend by phone for 30 minutes to hear each member give their input to your question.
- By end of the week - goal would be to have decisions made on interim CIO and COO…and to have clarity on technology platform decision.

Although the state of Oregon had requested hundreds of millions of dollars to build an IT platform, Bonetto was now advising the Governor that Cover Oregon should not be focused on "an IT platform that is going to be highly scrutinized over the next several years," or on "whether or not they're providing appropriate levels of customer service." With respect to his statement about the need for a "Cover Oregon team that is solely focused on moving the marketplace . . . not an IT platform that is going to be highly scrutinized over the next several years," Bonetto testified:

> Q. And you'll see that halfway down the page in that paragraph beginning with "but," you wrote that you don't need an IT platform that is, quote, "going to be highly scrutinized over the next several years." What did you mean by that?
>
> A. I can't exactly recall, but I would think it was more focused on the Governor's healthcare agenda and the segment before that of moving the marketplace.
>
> Q. And this was on March 23rd of 2014. Did you have a preference at this time to close up Cover Oregon and move to the federally facilitated exchange known as healthcare.gov?
>
> * * *
>
> A. In March, I think there were several factors that we were still looking at. One still had to do just with the viability of the vendor and, again, being promised over and over again that we were going to have something, and it never materialized. And then the second really was then looking at this IT committee and looking at their recommendations through the lens of risk, schedule, and cost.
>
> Q. And, at that time, did you know if the Governor had a preference to move to the federally facilitated exchange?
>
> A. The Governor, the last thing that he wanted to do was to make this transition. He was very committed to making this work.
>
> Q. Did you discuss the need to have an IT platform that is not highly scrutinized with Patricia McCaig?
>
> A. Not that I recall.
>
> Q. Did you discuss the need to have a IT platform that is not highly scrutinized with Tim Raphael?
>
> A. Not that I recall.

Q. Did you believe that an IT platform that was highly scrutinized could negatively impact the Governor's political standing?

A. No.

Q. Did you believe the high scrutiny surrounding Cover Oregon could negatively impact the Governor's reelection campaign?

A. No. That was not the focus. The biggest thing was to have the opportunity to enroll individuals for health care, which really led into his healthcare agenda and transformation.

Q. I understand you may say that's not the focus, but at the time, did you have any belief that a highly scrutinized exchange could negatively impact the Governor's political standing?

A. At the time, I would say no, and if you look at where he was with polling, there was really very little concern.[297]

Bonetto testified that there was very little concern about negative media coverage, but, less than two weeks earlier, the Governor emailed Bonetto: "I am very concerned that we do not have our ship in order going into battle. We are running out of time. Need a very candid conversation. We have almost no margin left to be reacting to this, to the NYT reporter, to the pending AP story on other IT problems in the administration."[298]

Moreover, Bonetto testified the last thing that the Governor wanted to do was make the transition to the federal exchange.[299] The documents show, however, that moving to the federal exchange was being seriously considered, and Kolmer testified that the Governor's office preferred moving to HealthCare.gov.[300] The Governor requested information about the different technology options, and Bonetto started working closely with Goldberg and Kolmer to gather information for the Governor on the technology decision.[301] On March 22, 2014, Goldberg told Bonetto and Kolmer that he would gather information about the different technology options.[302] In his email, he emphasized the importance of information from Tina Edlund regarding how much of the technology investment can be used in Medicaid if they use HealthCare.gov as the platform for enrolling individuals in qualified health plans.[303] On March 25, 2014, Goldberg

[297] Bonetto, Tr. at 17-18.
[298] Email from Mike Bonetto to John Kitzhaber (March 10, 2014) (MBG2047421).
[299] Bonetto, Tr. at 18.
[300] Kolmer testified that he did not remember when moving to HealthCare.gov became the preferred option for the Governor's office. Kolmer, Tr. at 52-53 & 165-166.
[301] Email from Bruce Goldberg to Mike Bonetto, copying Sean Kolmer (March 24, 2014) (MBG2028022).
[302] Email from Mike Bonetto to Bruce Goldberg, copying Sean Kolmer (March 22, 2014) (MBG2044366).
[303] *Id*.

sent Bonetto, Kolmer, and Edlund his "attempt to summarize the issues, outline costs and address some of the gov's questions."[304] Bonetto sent the information to Kitzhaber.[305]

The next day, on March 26, Kitzhaber emailed Kolmer, copying Bonetto, to let them know that he would be attending the Technology Options Workgroup meeting on March 27, 2014 and asked Kolmer to set up the meeting with a risk assessment drafted from Goldberg's information.[306] In the risk assessment, which listed advantages and disadvantages of staying with the current technology versus going to the federal website, he stated:

> I think it is a mistake to hedge our best with the federal exchange as the back up. We eat up time and money. More stranded investment. So question is our degree of confidence that we have the right technology platform; that we can get it up soon enough; that it will perform reliably and be within our budget."[307]

Before the Technology Options Workgroup meeting on March 27, 2014, Kolmer emailed Bonetto about Kitzhaber's risk assessment. Kolmer wrote: "i was rereviewing his take on where he is. caught this sentence that i missed before. I **think it is a mistake to hedge our bets with the federal exchange as the back up**. call me prior to 8."[308] Bonetto testified at a deposition about this email. He stated:

> Q. You will see that one of these emails was from Sean Kolmer to you in which he says: "I think it is a mistake to hedge our bets with the Federal exchange as the backup." At the time, what did you believe Sean Kolmer meant by "I think it is a mistake to hedge our bets with the Federal exchange as the backup"?
>
> A. I don't recall.
>
> Q. Then you'll see that this next document is from John Kitzhaber to Sean Kolmer and you, and this was the day before, and if you go to the second-to-the-last page, you will see that, in this yellow section, the Governor himself said -- or in this document that was attached to his email -- the Governor said: "I think it is a mistake to hedge our bets hedge our bets with the Federal exchange as the backup." Now, first, I need to ask you the fact that, in this email, is it your understanding that the attachment to this email that has "Staying with Current Technology" at the top and "Going to the Federal Site," was this document created by the Governor?

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[304] Email from Bruce Goldberg to Mike Bonetto, Sean Kolmer, Bruce Goldberg, Tina Edlund (March 25, 2014) (MBG2028008-11).
[305] Email from Mike Bonetto to John Kitzhaber (March 25, 2014) (CONGJK000537-540).
[306] Email from John Kitzhaber to Sean Kolmer copying Mike Bonetto (March 26, 2014) (MBG2037564-567).
[307] *Id*.
[308] Email from Sean Kolmer to Mike Bonetto (March 27, 2014) (MBG2035204).

* * *

A. I believe so.

Q. What do you believe the Governor meant by, "I think it is a mistake to hedge our bets with the Federal exchange as the backup"?

A. I'm not exactly clear.[309]

On March 22, in addition to asking Goldberg and Kolmer to begin collecting information about the technology decision for the Governor, Bonetto also told Kolmer and Goldberg:

> [The Governor] also talked with Alex Petit [sic] yesterday about potentially filling the CIO role on an interim basis.. Sounds like Alex didn't say no…but pushed back quite a bit because he said he can't step into that role until he knows what we want. Thus, the need to clearly articulate our core objective.[310]

Alex Pettit testified that he viewed the Governor as the ultimate decision-maker. He stated:

Q. When the governor called and asked you to serve as the acting chief information officer of Cover Oregon, did he give you any other instructions or did you ask for any other instructions about what you would be doing while you were at Cover Oregon?

A. So I asked him directly what is the commander's intent, and he asked me what did I mean by that.

I said, Well, what do you want as the outcome here; what is it that you desire; what's the end game for you? He told me directly that he wanted it be successful. He wanted to make the thing go live. He wanted to make it successful. If we couldn't make it successful, he wanted me to salvage everything I could from it.

Q. So during your time at Cover Oregon, did you view the governor as the commander, the person who you went to for the ultimate decision making?

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[309] Bonetto, Tr. at 19-20.

[310] Email from Bruce Goldberg to Michael Bonetto, copying Sean Kolmer, Bruce Goldberg (March 22, 2014) (MBG2028022-23). During his transcribed interview, Alex Pettit said he was directly asked by Governor Kitzhaber to serve as the interim Chief Information Officer and that the Technology Options Workgroup recommended to the Governor that he serve in that role. Pettit, Tr. at 13.

A. I felt he had the ultimate decision-making authority, yes, ma'am.[311]

Pettit started at Cover Oregon as the interim Chief Information Officer (CIO) on March 31, 2014.[312] When Pettit transitioned to Cover Oregon, he brought another individual from the Department of Administrative Services with him to work at Cover Oregon, Sarah Miller. Miller eventually was selected to serve as one of the individuals to lead the transition to the FFM. Goldberg, who then was serving as the interim Executive Director of Cover Oregon and in charge of all staffing decisions for Cover Oregon, was not advised of this decision. Goldberg testified that it was clear Bonetto and Kolmer had been involved in the decision for Sarah Miller to transition to Cover Oregon, and that he was not included in that decision-making process. Goldberg stated:

Q. Is this an e-mail chain between you, Sean Kolmer and Michael Bonetto from April 1st and 2nd.

A. Yes.

Q. So on April 1st you said that you've been reflecting on your anger and reactions on presumably Sunday, March 30th. Do you recall what made you angry?

A. Yes, I do.

Q. What was that?

A. I had heard that from somebody that they were -- someone from the Department of Administrative Services was coming over to work at Cover Oregon and I had not heard about that. And I was very angry that I learn about that from that person and not from Mike and Sean Kolmer, who clearly had been involved in that.

Q. Why would you have learned that information from Mike and Sean as the executive director of Cover Oregon -- or the interim director? Did you have control over staffing at Cover Oregon?

A. I did and that's what concerned me that someone was being sent over to work with us and I had not been a part of that discussion and when I found out about it, I was really angry.

Q. Do you know who made the decision to send this individual over to Cover Oregon?

A. No, I do not.

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[311] Pettit, Tr. at 14-15.
[312] Email from Cassandra Ferder to OEIB Policy Team (April 3, 2014) (GOV_HR00049820-21).

Q. Do you know why the decision was made?

A. Yes. This was -- you know, this was around the time of the Alex Pettit coming over as CIO. And we had had discussions about Alex coming over and had total agreement about that. And this was someone who Alex was work bringing over with him to work with him. And I didn't think that was part of the deal. And it had not been mentioned to me before and I was upset about it.

* * *

Q. Were you ever concerned that the governor's office was taking control over Cover Oregon?

A. No. I wasn't upset about them taking control of Cover Oregon. You know, in this circumstance I was -- I was concerned that two people that I had worked closely with and had good communications with for a lot of years hadn't told me about this and so I was pretty angry about that.[313]

The Governor's March 26 email to Kolmer, copying Bonetto, showed he was concerned it was a mistake to hedge their bets with the federal exchange as the back up. On March 27, the Technology Options Workgroup convened by Goldberg to examine the different technology options for Cover Oregon recommended "that Cover Oregon should continue development and deployment of the current technology solution with a new vendor while actively retaining the ability to migrate to the FFM solution as a contingency if key milestones were missed."[314] The Technology Options Workgroup was composed of IT experts, including the Chief Information Officers from some insurers and large health systems and a couple of board members.[315] They made this decision "[b]ased upon the information provided to the workgroup by the Cover Oregon staff and consultants."[316]

During the month of March, the Technology Options Workgroup met a total of six times, sometimes twice a week.[317] This process was termed the "100 Day Plan."[318] According to the May 8, 2014 Final Report on the Cover Oregon technology option:

> The 100 Day Plan was for Cover Oregon to move forward with the dual path approach respective of the milestones described in Table 3. These milestones were described as contingency triggers, where failure to achieve a milestone would trigger the contingency to implement the move

[313] Goldberg, Tr. at 94-96.
[314] Pettit, May 8, 2014 Cover Oregon Final Report, at 3 & 7.
[315] Goldberg, Tr. at 39.
[316] Pettit, May 8, 2014 Cover Oregon Final Report, at 7.
[317] *Id*. at 3.
[318] *Id*. at 7.

to the FFM. This plan required that the FFM solution be actively pursued simultaneously during the 100 day period.

If Cover Oregon were to have successfully completed the necessary tasks through June 30, 2014, the FFM contingency effort would have been halted and all resources focused on the completion of the current technology solutions. Conversations with CMS and the State of Idaho supported that this approach provided sufficient time to implement the FFM by the start of the open enrollment period. While the June 30 date is the last go/no go formal decision point, failure to achieve any milestone would trigger the commitment to move to the FFM.[319]

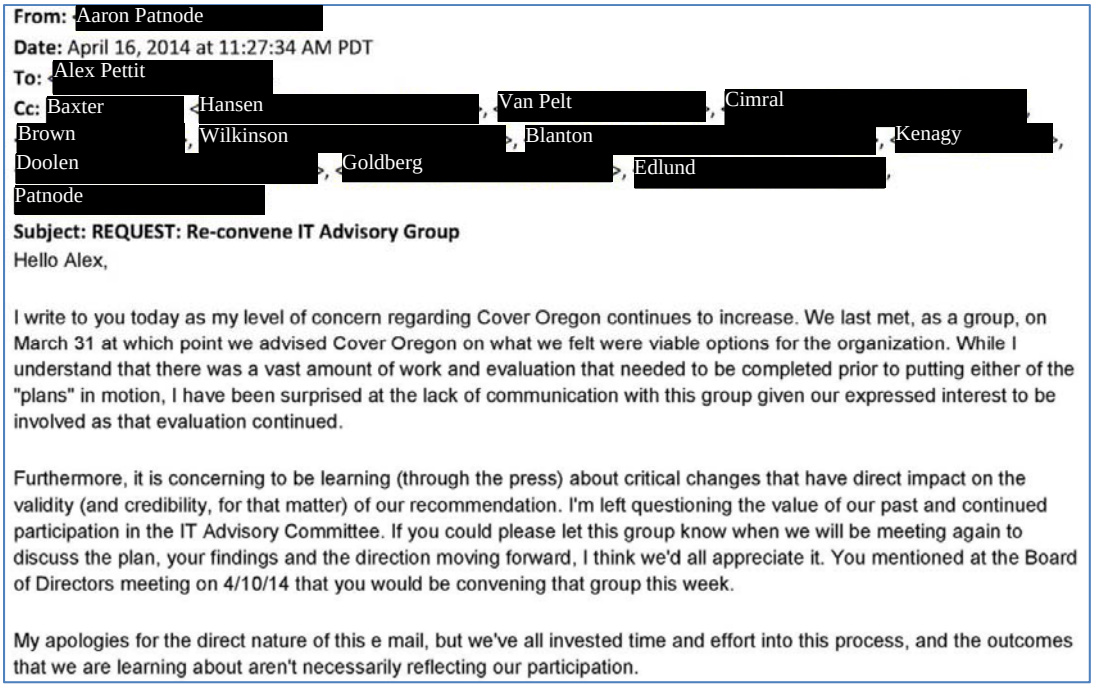
The May 8, 2014 report identified several milestones:

Table 3: Fix Technology Using a New Vendor Milestones

1	Develop a product roadmap focusing on ACA requirements	4/4/2014
2	Sole source procurement approved	4/4/2014
3	Function gap completed and reasonable	4/11/2014
4	Cover Oregon governance structure build & operational	4/11/2014
5	Cover Oregon management in place	4/30/2014
6	Cover Oregon attrition is managed	4/30/2014
7	System integrator contract completed	4/30/2014
8	Open enrollment functionality requirements complete	5/30/2014
9	Open enrollment functional design complete	5/30/2014
10	Open enrollment technical design complete	5/30/2014
11	Open enrollment development on-track	6/15/2014
12	Final go/no-go decision	6/30/2014

After the Technology Options Workgroup met on March 31, 2014, they did not meet again until April 24, 2014. This inactive period concerned some members of the Technology Options Workgroup. Documents show the Technology Options Workgroup was kept out of the loop:[320]

[319] *Id.* at 7-8.
[320] Email from Michael Bonetto to Patricia McCaig (April 16, 2014) (MBG2001530-31).



From: Aaron Patnode
Date: April 16, 2014 at 11:27:34 AM PDT
To: Alex Pettit
Cc: Baxter Hansen, Van Pelt, Cimral, Brown Wilkinson, Blanton, Kenagy, Doolen, Goldberg, Edlund, Patnode
Subject: REQUEST: Re-convene IT Advisory Group

Hello Alex,

I write to you today as my level of concern regarding Cover Oregon continues to increase. We last met, as a group, on March 31 at which point we advised Cover Oregon on what we felt were viable options for the organization. While I understand that there was a vast amount of work and evaluation that needed to be completed prior to putting either of the "plans" in motion, I have been surprised at the lack of communication with this group given our expressed interest to be involved as that evaluation continued.

Furthermore, it is concerning to be learning (through the press) about critical changes that have direct impact on the validity (and credibility, for that matter) of our recommendation. I'm left questioning the value of our past and continued participation in the IT Advisory Committee. If you could please let this group know when we will be meeting again to discuss the plan, your findings and the direction moving forward, I think we'd all appreciate it. You mentioned at the Board of Directors meeting on 4/10/14 that you would be convening that group this week.

My apologies for the direct nature of this e mail, but we've all invested time and effort into this process, and the outcomes that we are learning about aren't necessarily reflecting our participation.

Aaron Patnode's email was sent to Bonetto and he forwarded it to McCaig. Bonetto wrote: "Just saw this…all the more reason to land on a date asap."[321] McCaig responded: "!! I have asked directly if Alex was communicating with them. Sheesh. This is avoidable. Are you worried about Alex's response?"[322] Bonetto replied: "Yes…let's discuss with him tomorrow."[323]

Pettit testified about this email in a deposition. Pettit stated he had not been updating the Technology Options Workgroup members and was concerned how they would react to learning about the final meeting being open to the public. He testified:

> Q. So you do remember receiving this E-mail from Aaron Patnode on April 16, 2014?
>
> A. Yes, ma'am.
>
> Q. And it's to you, and then is he copying other members of the Technology Options Workgroup on the E-mail?
>
> A. And some who -- so yes. Let me make sure that's the only group that's on there, but it looks that way.
>
> Tina wasn't on the workgroup. So he includes here.

---

[321] *Id*.
[322] Email from Patricia McCaig to Mike Bonetto (April 17, 2014) (MBG 2002369-70).
[323] Email from Michael Bonetto to Patricia McCaig (April 17, 2014) (MBG2009937-38); *See also* Email from Clyde Hamstreet to Sean Kolmer, Mike Bonetto, Alex Pettit, copying Patricia McCaig, Sarah Miller (April 19, 2014) (McCaig October 15, 2015 Production 470-71).

Q. Okay. She wasn't on the workgroup.

A. And Bruce, I think Bruce on the workgroup, actually, technically. I don't think -- everything else, I think is as well. So yes, ma'am.

Q. So in his E-mail, Aaron Patnode write: "I write to you today as my level of concern regarding Cover Oregon continues to increase. We last met as a group on March 31st, at which point, we advised Cover Oregon on what we felt were viable options for the organization.

While I understand that there was a vast amount of work of evaluation that needed to be completed prior to putting either of the, quote, plan, end quotes, in motion, I have been surprised at the lack of communication with this group given our expressed interest to be involved as that evaluation continued."

A. Yes, ma'am.

Q. So do you know why Aaron Patnode was E-mailing you about this concern?

A. Sure. He was E-mailing me because he was a member of the committee and I hadn't had a -- so the -- so in all candidness, I was consumed by the operational deficiencies of the organization, and that was the highest priority I had to address, and so to -- first of all, if my job had exclusively been able to focus on ascertaining the correct go-forward path on the technology and how much it would take to remediate it and such, then I understand how 16 -- you know, a little over two weeks would be of a concern to him that he hadn't heard from me.

On the other hand, the thing that I had inherited was not at the point that we understood it was going to be. The situation in Cover Oregon itself was very different than what we were -- what I was led to believe it was, and so the very first thing I had to do was deal with project -- setting up project management, setting up delivery process, testing processes, very fundamental things that are operational in nature that should have been part of the -- we didn't even have an outage log going at that time.

Prior my arrival on March 31st, we would have outages and they would never be written down by the user support group. So beginning March 31st, I made them establish a log of tracking outages and what the resolutions to those outages were.

We had no methodology for tracking requests for things when. We had requested some from Oracle Managed Cloud Services or from Oracle Consulting Services, we would make asks for things and we would forget we had asked for them, and the, Oh, yeah, I had asked them for that. Then it would be, Well, do you remember when you asked them, do you remember who you asked, do you remember how you asked.

Things were being run in a way very haphazard manner, and so the very first thing that I had to deal with was establishing some rigor around how operations were managed, and I know that this team here was surprised to learn that. They weren't surprised, but they were surprised, because, again, none of us -- I don't think any of them expected and I certainly didn't expect that the state of things were what they were when I arrived there.

Having said that to Sue and Chris and the others, they understood, then, Okay, this explains the problems we're having with getting interfaces written; this explains why we've -- then they could -- do you know what I mean? It fit together pieces for them.

Q. Were they scheduled to have any meetings in between this period, so in between March 31st and April 16, 2014 that were cancelled?

A. I think there was one meeting scheduled for the end of the second week. I believe that's correct. It would have been for the 11th, and I ended up cancelling it on the 11th because of the transition of Clyde or to Clyde and all of the operational things we were addressing and still trying to finalize the information around what the status of things were for our ability to remediate the code or to salvage things from it or even to salvage some of the hardware.

Q. So during this period from the E-mails we saw earlier, you weren't updating the Technology Options Workgroup, but you were having regular calls with the Governor's Office to discuss your progress on the technology?

A. Yes, ma'am, I was. I had -- and, again, I don't remember that they were daily calls with the Governor's Office. They could have been daily calls. It's just time was moving very slowly for me then. It just seemed like days went on and on a long time.

So I don't remember how often I communicated with the Governor's Office on these things, but it was several times during the week and, again, there was an almost sign wave of highs and

lows that we would go through.

Q. And then were you the one who sent this E-mail to Michael Bonetto or do you not remember?

A. So I don't remember. I don't know that I sent it to him. It could have be from –

Q. That's okay if you don't remember.

A. No. I don't remember.

Q. Then so in the E-mail to Michael Bonetto, I realize you weren't on the exchange, but Patricia McCaig says: "I have asked directly if Alex was communicating with them. This is avoidable. Are you worried about Alex's response?"

Had Patricia McCaig asked you if you had been communicated with the Technology Options Workgroup?

A. Not to me, no, ma'am.

Q. And do you recall if Michael Bonetto or Patricia McCaig had a conversation with you about this E-mail and how you responded to it?

A. I know that there was an E-mail that I sent. So from Aaron's E-mail, I had put a top on it. What do you call it? When I forwarded, I had some comments or whatever it was, and I wrote that I needed to land the date of the next technology meeting. I know I said that.

Q. Who did you forward that to?

A. Oh, golly. I think it was Mike Bonetto, and I don't remember. I never wrote directly to Patricia that I'm aware of.

Q. Why would you be sending Mike Bonetto an E-mail about needing to land a date for the next technology meeting?

A. Well, we were in flux during that time with the new leadership of the executive director. They had needed to make these public meetings. So we needed to have a public -- there's some notification that we have. In Oklahoma, it was 24 hours before a public meeting, but because of the scrutiny of this, they wanted time to advertise it far and a wide that we were going to have

> the -- and the next meeting of the Technology Committee was going to be a public meeting. It was supposed to be a public meeting, and so we wanted to be sure that we gave notification as well as, very candidly, IT people tend not to want to be on camera, especially with things like this.
>
> So I was worried -- part of the concern that I had expressed with having an open meeting, public meeting for the Technology Committee was that I wouldn't even get a quorum, because many of those folks would just not want to come.
>
> So I needed lead time to tell them it's going to be all right, you know, this is what -- you know, get them familiar with the situation and get them familiar with where we are and what we're doing so that -- and then get them to commit to me to come in person so that they were going to be -- so that I would have my quorum that we could make our decision, because this was a voluntary group. They weren't in any positions of authority.[324]

Pettit stated that if "his job had exclusively been able to focus on ascertaining the correct go-forward path on the technology and how much it would take to remediate it and such," then he would understand why Aaron Patnode was concerned about not having the group updated in a two week period. Pettit's testimony shows, however, that operations at Cover Oregon were mismanaged.

Documents show that instead of working with the Technology Options Workgroup, Cover Oregon leadership, including Goldberg and Pettit, were coordinating with the Governor's staff and political operatives. The Technology Options Workgroup's "Cover Oregon 100 day plan" was on the agenda for the Area 51 kick-off team meeting, according to a March 30, 2014 email sent by Cylvia Hayes.[325] Cover Oregon was clearly a focus of the campaign. McCaig stated that she thought the Cover Oregon issue was "A distraction from a broader agenda that was really important to him for his final term."[326] McCaig testified about the Cover Oregon 100 day plan and why it would be included on the kick off agenda for the Area 51 team. She stated:

> There was no one who wasn't talking about the, quote-unquote, "debacle" that was Cover Oregon. And the Governor's supporters, with as much as intensity as anyone, were interested in, concerned about what was happening. So there was, it would have been inevitable that it would have

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[324] Pettit, Tr. at 243-249.
[325] Email from Cylvia Hayes to Mark Wiener, Kevin Looper, copying Patricia McCaig (March 30, 2014) (COGR_SHCBAR_KL_0826-27); Email from Dan Carol to Mike Bonetto (March 31, 2014) (MBG2004015-16).
[326] McCaig, Tr. at 44; *See also* Email from Tim Raphael to Mike Bonetto (March 20, 2014) (MBG2006256-57); Email from Dan Carol to Patricia McCaig, copying Cylvia Hayes, John Kitzhaber, Bill Wyatt, Tom Imeson, Curtis Robinhold, Stephen Bella, Steve Marks, Tim Raphael, Scott Nelson, Michael Bonetto, Mark Wiener, Mike Marshall (May 30, 2014) (MBG2005425); Email from Steve Bella to Michael Bonetto (April 17, 2014) (MBG2026693-96).

been a topic for the people in this room to just want to know what was going on.[327]

Shortly after the Technology Options Workgroup made the preliminary recommendation to stay with the current technology, the Cover Oregon SWAT team, composed of Kitzhaber's political operatives, requested that Pettit brief them on the recommendation. On April 2, 2014, McCaig requested to run the SWAT team meeting, including Cover Oregon leadership such as Pettit, and asked it be limited to Cover Oregon, including the "IT recommendation: content, process, and timing."[328] Bonetto agreed.[329]

Documents obtained by the Committee show the invitees to the April 2 call included Bonetto, McCaig, Raphael, Wiener, Looper, Nkenge Harmon Johnson, Palmateer, Scott Nelson, and Pettit. The call was arranged using the personal email accounts of Bonetto and the other invitees, including the other state employees. Bonetto testified about the April 2 call. He stated:

Q. Okay. And why did McCaig request that Alex Pettit join this call?

A. I believe so Alex could inform the group information from the IT committee.

Q. And, at this time, Patricia McCaig was not an employee of the State?

A. Correct.

Q. Why would she be asking for State employees to participate in calls?

A. She was part of this Cover Oregon team that was helping with communication issues.

Q. And do you recall what was discussed on this call?

A. I do not.

Q. Sometime after this call, did you discuss what to do regarding Cover Oregon with Patricia McCaig?

A. Yes. As the month progressed, we continued to have meetings and to get information from the IT committee.

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[327] McCaig Tr., *supra* note 207, at 47.
[328] Email from Michael Bonetto to Patricia McCaig, copying Kevin Looper, Mark Wiener, Tim Raphael, Nkenge Harmon Johnson, Dmitri Palmateer, Scott Nelson (April 2, 2014) (McCaig Production PMc 0060-61).
[329] *Id*.

Q. I would say within the 24 hours surrounding this call, did you have a conversation with Patricia McCaig about what to do regarding Cover Oregon?

A. I don't recall.

Q. If McCaig were to describe a long and difficult call with you during this time period regarding Cover Oregon, what do you believe she would be referring to?

A. I don't recall.[330]

Bonetto stated that they "continued to have meetings and to get information from the IT committee," but according to Aaron Patnode's April 16 email, the Technology Options Workgroup was not meeting or being updated about the progress on their recommendation. Bonetto stated he did not remember what was discussed on the April 2 call. He testified that he did not recall if there was a decision made to move to the Federal exchange during the call.

McCaig stated that Pettit discussed the Technology Options Workgroup's preliminary recommendation on a call.[331] McCaig also testified:

Q. April 2nd, 5:30 SWAT team meeting. In the middle of the email chain, you ask, Mike, have you been able to confirm with Alex -- and who is Alex?

A. I think his last name is Pettit, not Petite, Alex Pettit, who had been the day before announced as the interim director, interim IT director, I believe, of Cover Oregon. So he was responsible for working with the IT committee and all those kind of things.

Q. Okay. And why are you requesting that Alex Pettit join the SWAT team call?

A. So that all of these people who were dealing with communications issues would have a chance to ask him about timelines, scope of work, what he expects when, the details around providing the Governor with a clear and accurate picture of what they're looking at, and when it's going to be decided, and what tools they're going to use to decide it so he can be informed and thoughtful as he's out there discussing it.

Q. Okay. And then you say I'd like to run tonight's meeting. And I think it should be limited to Cover Oregon issues. Did you

[330] Bonetto, Tr. at 23-24.
[331] McCaig, Tr. at 91.

typically run the SWAT team meetings?

A. There really wasn't anything typical yet about the SWAT meetings. But Mike had sent an email that said he wanted a communication strategy around the upcoming, next week, Cover IT decision, Governor's involvement, timing, core message.

And the second was the clarity on the 3-month calendar and focus. My response to that was, beyond the, have you been able to confirm, I would like to run tonight's meeting and I think it should be limited to the Cover Oregon issues, not the 3-month calendar, but the Cover Oregon issues because -- this was on April 2nd.

Q. Uh-huh.

A. On April 10th, the Cover Oregon board was meeting. On April 9th or 10th, the Governor was going to be asked questions about the new hire for the Cover Oregon board, Clyde Hamstreet. It was going to be announced by the board, I think, the day before the meeting. And Greg Van Pelt was heading to Congress the next day. So you had a Governor, in a period of 4 or 5 days, who was going to be out in public everywhere, in editorial boards and everywhere else, where all of these issues are the ones they're asking him about. And we needed to have a narrative and a calendar about what was happening when, how it was happening, who was doing it. And it was an important thing to have a conversation about.

My reason for suggesting that I chair it is because the people in the room were all interested in the communications elements of it, not the mechanics of the platforms and what was it. It was the timing, it was the scope of work, it was all of those kinds of things. And Mike and Alex were the people who had the answers.

So Mike was the Governor's former healthcare guy. He was the guy who was hands on, on it. It was logical that I would chair the meeting and assure that we kept it directed at the communications elements and that Mike and Alex could give us the information that we needed to advise the Governor and put a plan together.

Q. Okay. And then do you remember during the call what information Alex Pettit shared with you about the progress of the IT decision?

A. I think the most important thing is that he was starting to talk about calendar. And that was the first time that any of us had. And I

think even the email that you're talking about with Tim, we were just starting to get some recognition of how quickly these things were going to be coming up. The IT committee, he was proposing, I believe, because new information was coming in, that he would give an update to the Cover Oregon board on April 10th, which turned out to be a big meeting.

And that at that board meeting, he was suggesting that the IT committee would then meet, I think, on April 21st. And that that would give him, as a new person in this, the time that he needed to assess all of the information that was coming in and be able to put some work into it, to present to the IT committee on.

Q. When you say the person, so do you know if Alex Pettit was on the IT work group before March 31st, 2014?

A. I think he was.

Q. So he had that –

A. He started in Oregon in January. I mean he came from another State in January. And he had a different job. So I don't know if he attended all the -- I don't know.

Q. Did you have an opinion of the information that Alex Pettit shared with you during the call about the technology advisory group's progress on –

A. We didn't talk about the progress, we talked about a calendar.

Q. You talked about a calendar. What did you talk about for the calendar?

A. The upcoming board meeting on April 10th.

Q. And you didn't talk anything about the IT process and the technology –

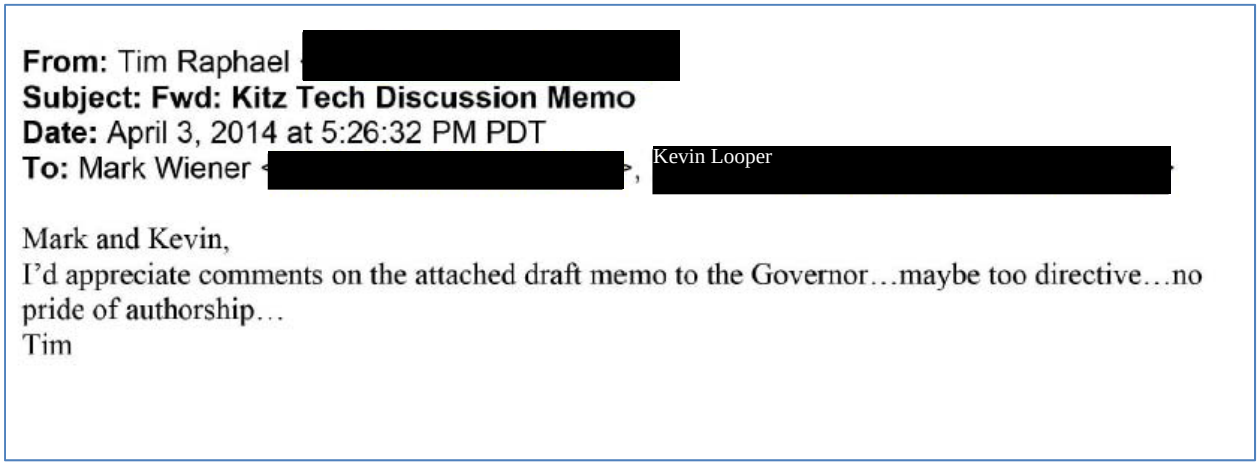
A. No. I think what he was reporting on was what he was going to tell the board then, which was about the calendar, about the timing for making these decisions.[332]

Documents and testimony show that, with respect to the April 2 SWAT team call, Pettit joined the call so he "could inform the group information from the IT committee," but Bonetto did not

[332] McCaig, Tr. at 98-101.

recall what was discussed during the call or the information provided by Pettit. McCaig testified that the call was focused on communications and that Pettit did not discuss the IT group's progress on the technology decision. McCaig said she updated Kitzhaber immediately after the phone call with Pettit.[333]

A memorandum obtained by the Committee, titled "Kitz Tech Discussion Memo," however, discusses the April 2, 2014 SWAT team call with Alex Pettit. This memorandum was sent via email by Tim Raphael to Mark Wiener and Kevin Looper on April 3, 2014. In the body of the email, Tim Raphael wrote: "Mark and Kevin, I'd appreciate comments on the attached draft memo to the Governor . . . maybe too directive . . . no pride of authorship."[334]



From: Tim Raphael [redacted]
Subject: Fwd: Kitz Tech Discussion Memo
Date: April 3, 2014 at 5:26:32 PM PDT
To: Mark Wiener [redacted], Kevin Looper [redacted]

Mark and Kevin,
I'd appreciate comments on the attached draft memo to the Governor…maybe too directive…no pride of authorship…
Tim

[333] *Id.* at 93.
[334] Email from Tim Raphael to Mark Wiener, Kevin Looper (April 3, 2014) (COGR_SHCBAR_KL_0882-83).

TO: Governor Kitzhaber
FROM: The Team
RE: Cover Oregon Technology Options

The focus of our meeting Friday morning is to discuss the timing and substance of the technology team's preliminary recommendation to the Cover Oregon Board. After a briefing from Alex Pettit, we have significant concerns about the recommendation of a "100-Day Plan" to continue the build-out of Cover Oregon's existing technology platform while also preparing for the possibility of moving to the federal exchange. We are convinced it would be a mistake for the board to send any signal at its meeting next week about next steps on technology.

In speaking with Alex it is clear that the technology team's recommendation was significantly influenced by CMS's late determination that if Oregon were to move to the federal exchange it would not be allowed to transfer enrollee data. Moving to the federal exchange -- which Alex concedes is the least risky technical option -- would force the state to essentially start over with all enrollment and walk away from its investment to date. Because the tech team had already ruled out adopting another state's technology as overly risky, CMS's determination essentially left the team with no option other than the default option of continuing investment in the current technology. That's problematic for two reasons. First, Alex describes Oracle's platform as having "fundamental technological and architectural problems." And second, it seems doubtful the federal exchange is actually a viable Plan B if it requires a do-over on enrollment, does not preserve any of the state's investment to date, and requires a risky technology transfer of Medicaid enrollment from Cover Oregon back to the Oregon Health Authority.

Instead of a "100-Day Plan," the tech team's recommendation would be better named the "all-in with the existing technology platform plan." And Alex says he cannot guarantee success or estimate what the total cost will be. He believes there is at least another year of development (and investment) required to build-out functionality to include renewals, change of circumstance and other modules.

There are too many questions, concerns and gaps to make a decision today. We recommend you give Alex the rest of the open enrollment period to better understand the risks, technology options and ramifications of various options, including revisiting the possibility of joining the federal exchange or adopting technology from another state. For the remainder of the open enrollment period, Cover Oregon would stick with its core message that everyone at the exchange is fully focused on boosting enrollment and that any decisions on technology will be made after the open enrollment period ends.

Alex's charge should be to identify the least risky option to ensure end-to-end online sign-ups for the public during the fall 2014 open enrollment period.

Contrary to Bonetto's testimony that the SWAT team was primarily a communications crisis team, this memorandum to the Governor shows the SWAT team shaped policy, especially with respect to the technology decision for Cover Oregon. The memorandum to the Governor states that the team has significant concerns with the "100-Day Plan" to continue to build out Cover Oregon's existing technology while maintaining the option to move to the FFM as a contingency. Documents show Kitzhaber was scheduled to meet with Pettit the next day, on

April 4, "to discuss the timing and substance of the technology team's preliminary recommendation to the Cover Oregon Board."[335]

On April 3, 2014, McCaig sent an email to Wiener and Looper, copying Raphael, with a list of "small items."[336] The first item on the list: "had a long difficult call with Bonneto [sic] last night – he has a lot to think about."[337] McCaig testified that this was a reference to the lack of support that Bonetto was getting from members on his team and that "he was concerned about his ability to be effective with his office."[338]

McCaig stated that Bonetto was going to think about whether he was going to resign. Bonetto testified that he did not recall any long difficult calls with McCaig during this period.[339]

The list also included: "Hold Friday a.m. for a meeting with JK on Cover Oregon IT." McCaig ended the email by writing, "After we figure out JK tomorrow, maybe we can tack on time for just the three of us."[340] During her deposition, McCaig was asked about this technology meeting with the Governor to discuss the "timing and substance of the technology team's preliminary recommendation to the Cover Oregon Board," and McCaig said she did not recall the meeting.

> Q. Okay. And then for Number five, you ask them to hold Friday a.m. for a meeting with JK on Cover Oregon IT. Bonetto supposed to let me know this a.m.
>
> A. Uh-huh.
>
> Q. What type of meeting were you having with -- is JK John Kitzhaber?
>
> A. Yeah.
>
> Q. On Cover Oregon IT.
>
> A. Yes. Yes. What day is Friday? So what day is April 3rd? I need to think through what –
>
> Q. I think it might have been –
>
> * * *

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[335] *Id*.
[336] Email from Patricia McCaig to Mark Wiener, Kevin Looper, copying Tim Raphael (April 3, 2014) (COGR_SHCBAR_KL_0881).
[337] *Id*.
[338] McCaig, Tr. at 104.
[339] Bonetto, Tr. at 24.
[340] Email from Patricia McCaig to Mark Wiener, Kevin Looper, copying Tim Raphael (April 3, 2014) (COGR_SHCBAR_KL_0881).

Q. So it would be Friday, April 4th. So on April 4th, you were having a meeting with John Kitzhaber?

A. Well, I imagine it is all about the updating on the timeline for the decisionmaking, about the IT decision on the Cover Oregon board, and the changes that are going to happen there. The first 2 weeks of April, the first 2, 3, actually all of April, there was a lot of incoming on a lot of different fronts related to Cover Oregon, and a lot of scheduling for the Cover Oregon activities that had a direct relationship for the Governor's calendar, and where he was going to be, and what he was going to be asked about. So I think it was all prep on that.

Q. Did you ask anyone to prepare any documents –

A. I didn't, not that I recall.

Q. -- for the April 4th meeting?

A. I don't remember that meeting. I don't even know if I was at that meeting.[341]

After the team drafted the memorandum to the Governor indicating that they had significant concerns about the "100-Day plan," they continued working on the technology decision:

- About an hour after sending the memorandum on April 3, 2014, Raphael emailed the Governor's other political operatives to ask whether they should be considering other technology options for the future of Cover Oregon.[342]

- In an April 4, 2014 email, Bonetto told McCaig that he thought "we have a 2 step decision process at the moment: 1) How to handle Hamstreet contract and Bruce's exist . . . . and 2) Decision on IT platform."[343] With regard to item (2), Bonetto wrote:

  We'll need to make a decision on how we want to handle next Thursday's Cover Oregon board mtg probably by next Monday. We could slow walk this through the end of open enrollment before making any decision public. This would mean that Hamstreet and Alex would need to execute the contract with Deloitte to become the system integrator before having anything go before the board. Just need to think through if that decision should go to the board prior to signing. May be able to say that Deloitte

[341] McCaig, Tr. at 105-106.
[342] Email from Tim Raphael to Mark Wiener, Kevin Looper, Michael Bonetto, Patricia McCaig, Nkenge Harmon Johnson, Dmitri Palmateer (April 3, 2014) (MBG2027983-85).
[343] Email Patricia McCaig to Mike Bonetto (April 4, 2014) (MBG2006793-95).

will be needed in that role for either decision (state-based vs. federal)…so management team needed to execute contract immediately.[344]

The documents show the Governor and his political operatives were not willing to accept the Technology Options Workgroup's recommendation. The Technology Options Workgroup was a group of experts created by the Executive Director at Cover Oregon to evaluate the different technology options. After the Technology Options Workgroup made their preliminary recommendation on March 27, the Governor was still privately discussing the future of the exchange with an outsider. Kitzhaber's political operatives were receiving briefings from the new CIO at Cover Oregon, Pettit, and advising the Governor that they had "significant concerns about the recommendation of a '100-Day Plan' to continue the build-out of Cover Oregon's existing technology platform while also preparing for the possibility of moving to the federal exchange."[345]

Bonetto testified as to whether McCaig, Raphael, Wiener, Looper, or others had any experience in health IT systems or healthcare policy. Bonetto stated:

> Q. You've mentioned at length that the SWAT team or these people involved are policy advisers, and they were brought in to help assist the Governor with what was going on with Cover Oregon. To your understanding, what experience does Mark Wiener have in building IT systems or on healthcare policy?
>
> A. I don't know, but his background for this had much more to do with crisis communication and with government agencies.
>
> Q. And what experience does Kevin Looper have with health IT systems or healthcare policy?
>
> A. I would echo the same that I just did with Mark.
>
> Q. And what role or experience does Patricia McCaig have with health IT or health policy?
>
> A. I would say the same for Patricia as well as Tim.
>
> Q. So, for Tim Raphael, you would say he also has no experience in health IT planning or healthcare policy?
>
> A. With crisis communication and with government agencies.
>
> Q. And Nkenge, did she have any experience in health IT or healthcare policy?

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[344] *Id*.
[345] Email from Tim Raphael to Mark Wiener, Kevin Looper (April 3, 2014) (COGR_SHCBAR_KL_0882-83).

A. Her background was in communications.[346]

According to the May 8 Final Report, the "workgroup included business and technical leaders from the Cover Oregon Board of Directors, health care industry representatives, State of Oregon leadership, and Cover Oregon executive team members."[347] The Workgroup member roster from the Final Report lists seven Chief Information Officers that are part of the workgroup and many other health care experts.

Table 1: Workgroup Members

Workgroup Members	Organization
Liz Baxter	Chair, Cover Oregon Board
Dr. George Brown	Member, Cover Oregon Board
Teri Andrews	Member, Cover Oregon Board
Greg Van Pelt	President, Oregon Health Leadership Council
Chris Blanton	President, BridgeSpan Health
Erick Doolen	CIO, PacificSource Health Plans
Sue Hansen	CIO, Moda Health
John Kenagy	CIO, Legacy Health
Aaron Patnode	Executive Consultant, Kaiser Permanente Northwest
Bruce Wilkinson	CIO, Providence Health Plans
John Cimral	CIO, Cambia Health Solutions
Alex Pettit	CIO, State of Oregon
Tina Edlund	Acting Director, Oregon Health Authority (OHA)
Sean Kolmer	State of Oregon Governor's Office
Dr. Bruce Goldberg	Interim Executive Director, Cover Oregon
Aaron Karjala	CIO, Cover Oregon
Triz delaRosa	COO, Cover Oregon

Shortly after the Technology Options Workgroup made their preliminary recommendation in March 2014, a member of the workgroup, Aaron Patnode, emailed Goldberg to ask for a project update. Patnode "recall[ed] that 4/4/14 was one of the key trigger dates that needed to be met for a key piece of work in order for the plan to continue forward."[348]

On April 4, 2014, Bruce Goldberg responded to Aaron Patnode that "We have go ahead to go sole source – secured on Wednesday. We can discuss further at Monday meeting."[349]

Aaron Patnode responded: "Great. Thank you for the information. Will wait for Monday for further discussion. Congratulations on making the first critical checkpoint!"[350]

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[346] Bonetto, Tr. at 37-38.
[347] Pettit, May 8, 2014 Cover Oregon Final Report, at 1.
[348] Email from Aaron Patnode to Bruce Goldberg, copying Alex Pettit, Bruce Wilkinson, Chris Blanton, Erick Doolen, George Brown, John Kenagy, John Cimral, Liz Baxter, Sean Kolmer, Sue Hansen, Tina Edlund, Gregory Van Pelt (April 4, 2014) (GOV_HR00049432-34).
[349] *Id.*
[350] *Id.*

The Monday meeting of the Technology Options Workgroup was cancelled.[351]

5. Kitzhaber requests more information about the technology options

Documents show that on April 5, 2014, Cover Oregon leadership and the Governor's office participated in a call to discuss the technology recommendation and the upcoming Technology Options Workgroup meeting. Emails show the call included Patty Wentz, Pettit, Bonetto, Goldberg, and Kolmer, and that they decided to cancel the Technology Options Workgroup meeting scheduled for April 7.[352] During the call, they discussed giving contractors their 30-day notice.[353]

After the call, Wentz expressed concerns about giving contractors their 30-day notice. She said: "[i]f we start giving contractors notice people will assume coming out of Friday's story that it's another step toward the federal exchange and will be another blow against our ability to lay things out in an organized fashion."[354]

Goldberg testified as to why this group of individuals would have a call on April 5. He stated it was likely they were organizing the work to communicate what was going on to the Technology Options Workgroup. He testified:

> Q. Why would you be having a call with these individuals at this time?
>
> A. You know, we were in the process of working with the technology team and making decisions and having them make decisions and putting out information for that team to deal with. Mike and Sean and Patty Wentz, we had all worked very closely over the years on how to prepare information for the public so that we didn't get information out too soon that was going to change, so that we could present something. And this was a call that helped – I think we were organizing the work about how to communicate a lot of what was going on at the technology committee.[355]

Email shows they eventually decided to cancel the upcoming Technology Options Workgroup meeting, however. Wentz and Bonetto coordinated with McCaig and Raphael after the call. Wentz forwarded her email expressing concerns about giving contractors 30-days notice to McCaig and Raphael and added that she was "[t]rying to jump ahead of actions without coordination. May need some help with Alex. He's right that the contractors need to go but it

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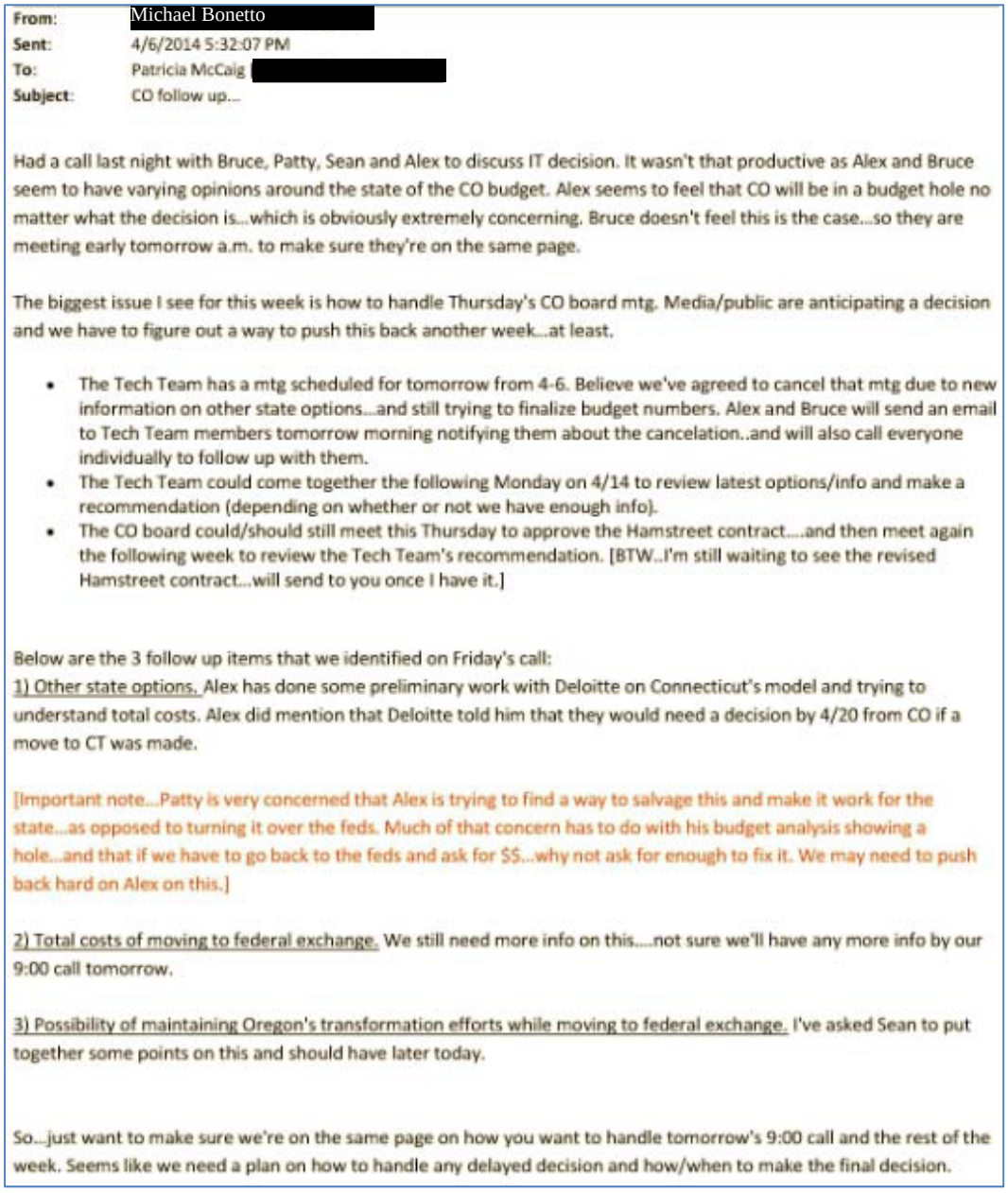
[351] Email from Bruce Goldberg to Alex Pettit, Mike Bonetto, Patty Wentz, Sean Kolmer (April 6, 2014) (GOV_HR00078717-21).
[352] *Id*.
[353] Email from Patty Wentz to Patricia McCaig, Tim Raphael (April 6, 2014) (McCaig October 5, 2015 Production 334-36).
[354] *Id*.
[355] Goldberg, Tr. at 99.

sends a signal. You may recall what happened when we let some Oracle staff go. Was big news."[356] Bonetto emailed McCaig to provide an update on the call and to coordinate next steps.[357]



From: Michael Bonetto [redacted]
Sent: 4/6/2014 5:32:07 PM
To: Patricia McCaig [redacted]
Subject: CO follow up...

Had a call last night with Bruce, Patty, Sean and Alex to discuss IT decision. It wasn't that productive as Alex and Bruce seem to have varying opinions around the state of the CO budget. Alex seems to feel that CO will be in a budget hole no matter what the decision is...which is obviously extremely concerning. Bruce doesn't feel this is the case...so they are meeting early tomorrow a.m. to make sure they're on the same page.

The biggest issue I see for this week is how to handle Thursday's CO board mtg. Media/public are anticipating a decision and we have to figure out a way to push this back another week...at least.

- The Tech Team has a mtg scheduled for tomorrow from 4-6. Believe we've agreed to cancel that mtg due to new information on other state options...and still trying to finalize budget numbers. Alex and Bruce will send an email to Tech Team members tomorrow morning notifying them about the cancelation..and will also call everyone individually to follow up with them.
- The Tech Team could come together the following Monday on 4/14 to review latest options/info and make a recommendation (depending on whether or not we have enough info).
- The CO board could/should still meet this Thursday to approve the Hamstreet contract....and then meet again the following week to review the Tech Team's recommendation. [BTW..I'm still waiting to see the revised Hamstreet contract...will send to you once I have it.]

Below are the 3 follow up items that we identified on Friday's call:
1) Other state options. Alex has done some preliminary work with Deloitte on Connecticut's model and trying to understand total costs. Alex did mention that Deloitte told him that they would need a decision by 4/20 from CO if a move to CT was made.

[Important note...Patty is very concerned that Alex is trying to find a way to salvage this and make it work for the state...as opposed to turning it over the feds. Much of that concern has to do with his budget analysis showing a hole...and that if we have to go back to the feds and ask for $$...why not ask for enough to fix it. We may need to push back hard on Alex on this.]

2) Total costs of moving to federal exchange. We still need more info on this....not sure we'll have any more info by our 9:00 call tomorrow.

3) Possibility of maintaining Oregon's transformation efforts while moving to federal exchange. I've asked Sean to put together some points on this and should have later today.

So...just want to make sure we're on the same page on how you want to handle tomorrow's 9:00 call and the rest of the week. Seems like we need a plan on how to handle any delayed decision and how/when to make the final decision.

Documents show Bonetto coordinated with McCaig and provided her the updates he received about the technology options. Bonetto expressed his concern that Pettit might

[356] Email from Patty Wentz to Patricia McCaig, Tim Raphael (April 6, 2014) (McCaig October 5, 2015 Production 334-336).
[357] Email from Mike Bonetto to Patricia McCaig (April 6, 2014) (McCaig October 5, 2015 Production 314-315); Email from Mike Bonetto to Patricia McCaig (April 6, 2014) (MBG2007742-43).

recommend adopting Connecticut's model rather than move to the federal technology, so they would need to "push back hard on Alex on this."[358]

At this point, the Technology Options Workgroup had already made its recommendation to stay with the current technology, with the FFM as a contingency if any milestones were missed. Bonetto's email shows they were not honoring the Technology Options Workgroup's recommendation and still "discussing" the options and not including the Technology Options Workgroup in those discussions.

Also at this point, Pettit was the interim Chief Information Officer of Cover Oregon. Connecticut's exchange, Access Health CT, received $176 million from the federal government and the state-based technology launched relatively successfully on October 1, 2013.[359] Access Health CT therefore decided to commercialize its exchange in December 2013 and began offering its services in January 2014.[360] They offered to host other state exchange websites and sell consulting services and applications. According to a press release issued by HHS, by August 2014, at least nine states had reached out to Connecticut about implementing its technology.[361] Against that backdrop, in December 2015, Oregon solicited proposals for a technology that was successfully running a health exchange in another state.[362]

After Bonetto emailed McCaig these updates, McCaig sent Bonetto a proposed agenda for the upcoming call on April 7.[363]

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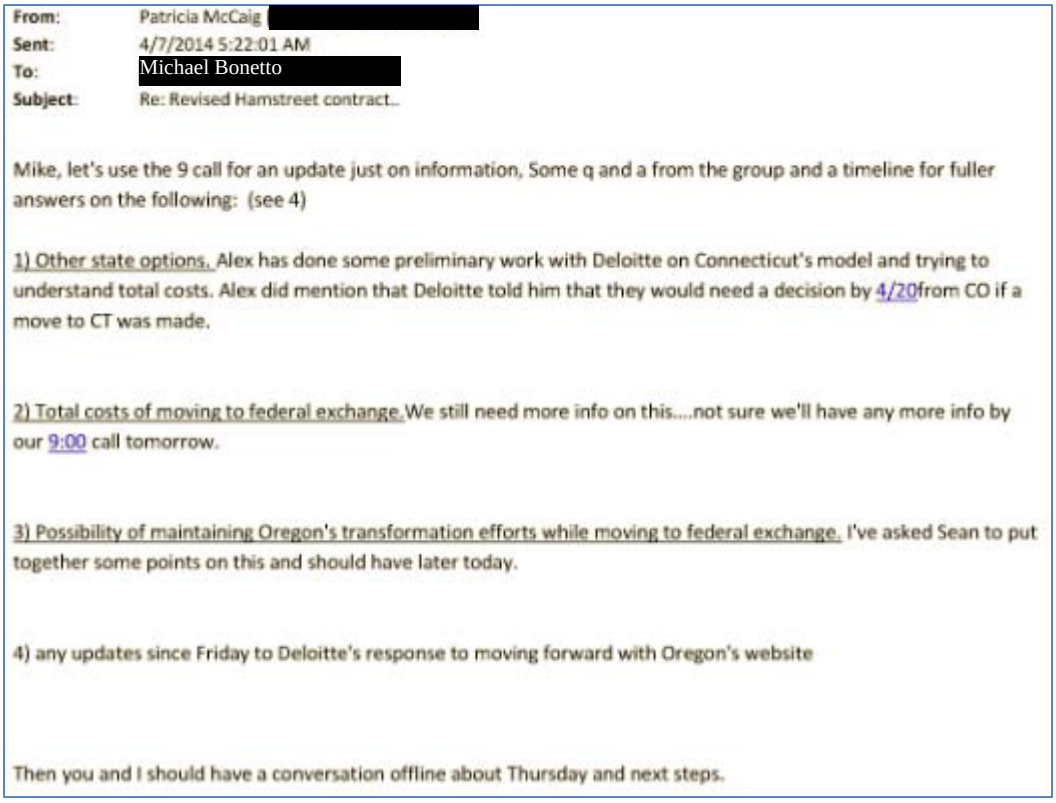
[358] *Id*.
[359] J.R. Reed, *Healthcare a success in Ct*., YALE DAILY NEWS (Nov. 19, 2013).
[360] Clint Boulton, Connecticut Health Exchange Shifts into Startup Mode, THE WALL STREET JOURNAL (May 8, 2014).
[361] HHS and CMS announce new members of the management team ahead of 2015 Open Enrollment, HHS PRESS OFFICE (August 26, 2014).
[362] Associated Press, *Oregon considering running healthcare exchange again*, KGW.COM (Dec. 11, 2015), *available at* http://www kgw.com/news/health/oregon-considering-running-healthcare-exchange-again/3171387.
[363] Email from Patricia McCaig to Mike Bonetto (April 7, 2014) (MBG2004046-47); Email from Mike Bonetto to Patricia McCaig (April 7, 2014) (MBG2009693-94); Email from Mike Bonetto to Patricia McCaig (April 6, 2014) (McCaig October 5, 2015 Production 314-315).



From: Patricia McCaig [redacted]
Sent: 4/7/2014 5:22:01 AM
To: Michael Bonetto
Subject: Re: Revised Hamstreet contract..

Mike, let's use the 9 call for an update just on information, Some q and a from the group and a timeline for fuller answers on the following: (see 4)

1) Other state options. Alex has done some preliminary work with Deloitte on Connecticut's model and trying to understand total costs. Alex did mention that Deloitte told him that they would need a decision by 4/20from CO if a move to CT was made.

2) Total costs of moving to federal exchange. We still need more info on this....not sure we'll have any more info by our 9:00 call tomorrow.

3) Possibility of maintaining Oregon's transformation efforts while moving to federal exchange. I've asked Sean to put together some points on this and should have later today.

4) any updates since Friday to Deloitte's response to moving forward with Oregon's website

Then you and I should have a conversation offline about Thursday and next steps.

Bonetto replied, "Sounds good."[364] McCaig had also requested that someone from Hamstreet's team join the SWAT team meetings—four days before he was confirmed as the interim Executive Director—noting that she "seems the sooner we all hear the same thing the better."[365]

Documents show the April 7 call involved Cover Oregon leadership (including Goldberg, Pettit and Mark Schmidt from Hamstreet & Associates), the Governor's staff, and the Governor's political operatives, including McCaig and others.[366] Kolmer emailed Bonetto additional details about the third item on the agenda: the possibility of maintaining Oregon's transformation efforts while moving to the federal exchange.[367] Bonetto immediately sent them to McCaig and stated, "[w]e'll continue to refine this over the next few days."[368]

After the call on April 7, McCaig emailed Kitzhaber to update him on their progress on Cover Oregon and to advise him that he should not raise certain issues about Cover Oregon with

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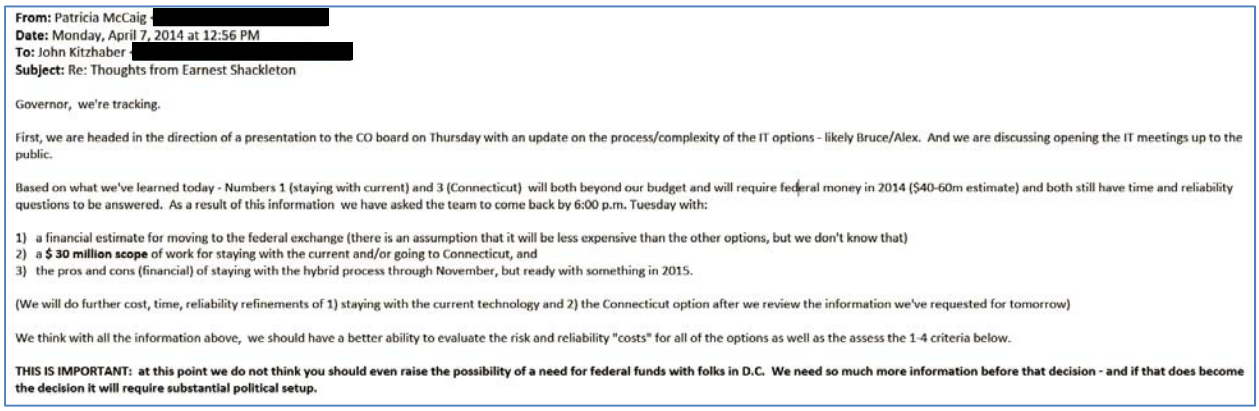
[364] Email from Mike Bonetto to Patricia McCaig (April 7, 2014) (MBG2009693-94).
[365] *Id.;* Email from Mike Bonetto to Patricia McCaig (April 7, 2014) (MBG2005588-89); Email from Mike Bonetto to Patricia McCaig (April 7, 2014) (MBG200693-94).
[366] Email from Patricia McCaig to Mark Wiener, Kevin Looper, Tim Raphael, copying Mike Bonetto, Nkenge Harmon Johnson, Patty Wentz, Dmitri Palmateer (April 7, 2014) (MBG2000804); Email from Patricia McCaig to Mark Wiener, Kevin Looper, Tim Raphael, copying Mike Bonetto, Nkenge Harmon Johnson, Patty Wentz, Dmitri Palmateer (April 7, 2014) (McCaig October 15, 2015 Production McCaig 212).
[367] Email from Sean Kolmer to Mike Bonetto (April 7, 2014) (MBG2041181-82).
[368] Email from Michael Bonetto to Patricia McCaig (April 7, 2014) (MBG2000693-94).

federal regulators. She wrote: "[A]t this point we do not think you should even raise the possibility of a need for federal funds with folks in D.C."[369]



From: Patricia McCaig [redacted]
Date: Monday, April 7, 2014 at 12:56 PM
To: John Kitzhaber [redacted]
Subject: Re: Thoughts from Earnest Shackleton

Governor, we're tracking.

First, we are headed in the direction of a presentation to the CO board on Thursday with an update on the process/complexity of the IT options - likely Bruce/Alex. And we are discussing opening the IT meetings up to the public.

Based on what we've learned today - Numbers 1 (staying with current) and 3 (Connecticut) will both beyond our budget and will require federal money in 2014 ($40-60m estimate) and both still have time and reliability questions to be answered. As a result of this information we have asked the team to come back by 6:00 p.m. Tuesday with:

1) a financial estimate for moving to the federal exchange (there is an assumption that it will be less expensive than the other options, but we don't know that)
2) a **$ 30 million scope** of work for staying with the current and/or going to Connecticut, and
3) the pros and cons (financial) of staying with the hybrid process through November, but ready with something in 2015.

(We will do further cost, time, reliability refinements of 1) staying with the current technology and 2) the Connecticut option after we review the information we've requested for tomorrow)

We think with all the information above, we should have a better ability to evaluate the risk and reliability "costs" for all of the options as well as the assess the 1-4 criteria below.

THIS IS IMPORTANT: at this point we do not think you should even raise the possibility of a need for federal funds with folks in D.C. We need so much more information before that decision - and if that does become the decision it will require substantial political setup.

Kitzhaber responded: "Yes, Agree not to raise possibility of federal funds. Did you have any discussion of keeping the hybrid process (And recovering damages plus from Oracle)?"[370] McCaig responded:

> Yes – developing financial pros/cons of hybrid and realistic timeline for 2015. Mike and I talked offline about Oracle – we're leaning, regardless of which option, of announcing we're going 'after' them. Cobbling a narrative together for the CO Thursday which has to do with getting CO/you on the side of doing everything you can to stay within the budget, daylighting what that actually means in terms of product, and going after Oracle. Next, let the process work, get the evaluation of the costs/benefits out there and if there are important benefits that are must haves and cost more, then everyone decides to go for more money. But we need to start the discussion from a different place. Make sense?[371]

Documents show campaign consultant McCaig was involved in conversations about analyzing the potential technology options. Both Bonetto and McCaig testified under oath that this was "communications" work. Furthermore, the Technology Options Workgroup recommended pursuing both keeping the technology and moving to the federal exchange, yet McCaig told Kitzhaber that they were focusing on moving to the federal exchange and would do "further cost, time, reliability refinements of 1) staying with the current technology and 2) the Connecticut option" after they reviewed the information about transitioning to the federal technology.

The email shows McCaig was primarily concerned about the cost of each option and the possibility of having to ask for additional federal funds. These concerns extend beyond communications issues, and into substantive aspects of the decision, contrary to McCaig's and

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[369] Email from John Kitzhaber to Patricia McCaig (April 7, 2014) (McCaig October 15, 2015 Production 231).
[370] Email from John Kitzhaber to Patricia McCaig (April 7, 2014) (McCaig October 15, 2015 Production 232).
[371] *Id.*

Bonetto's testimony that she primarily had a communications role. McCaig testified about her advice to Kitzhaber that if they need to ask for additional money, "it will require substantial political setup." She stated:

> Q. Is this an email chain between you and John Kitzhaber –
>
> A. It was.
>
> Q. -- on April 7th, 2014? I want to direct your attention to the last page of the email exchange. And Kitzhaber starts with saying, so I'll send Cover Oregon information, we need to make a decision. Why is Kitzhaber emailing you with the list of information that you need to make a decision about the technology?
>
> A. Because I think he knows that I am gathering information for him from his staff. From his staff, and from the people who they work with to present and think through a communications strategy around it. And he's going to be making a decision about what his position is on whatever the recommendation is.
>
> And these are the kinds of things in a narrative, or in explaining it to an editorial board, or talking to anybody, the public, these are the kinds of things he's outlining that will be the things he's going to be judging against when he makes a decision.
>
> Q. So you think that the way that a particular recommendation can be communicated was important in terms of what he would feel was the right technology path for Cover Oregon?
>
> A. No. I understand the way you're asking that question. And I think the emphasis is on the wrong thing. That our job is to understand what the policy criteria are that really matter and to identify them early on, so that they can be accommodated. And then that helps us be able to put a narrative together that's effective.
>
> It's not that you do it the other way around, that you try to make a choice for something that's communication easy. You actually don't want to do it that way. You want to take the time to have a thoughtful, in-depth, and mindful process so that you can explain to people why you made the decision you did.
>
> And as he says, these are thoughts. And he's starting to think through, what the elements for him, are going to be important, on whether he takes a position, and how he evaluates a position he's going to take. And he's being asked constantly about this.
>
> Q. Okay. And so why was he emailing you about this information

rather than his Chief of Staff Mike Bonetto?

A. I'm not sure that we weren't all one in the same when it came to this.

Q. I'm sorry, can you elaborate?

A. That we were all closely attuned. That Mike may have already known this. I don't know that he didn't. In fact, Mike probably would have been able to outline these things to me exactly the same way.

* * *

Q. And what do you mean, we do not think that you should raise the possibility of a need for Federal funds with folks in D.C.? Who is we?

A. So this entire document is based on me restating from a phone call that we had on the 7th, I think it was the 7th, and there was another one on the 8th with Mike Bonetto and Bruce Goldberg about where they were with the process. I was not directing any of this. I was writing it down and putting it in a memo for him to understand where we were going.

So when we say, when I say we need so much more information before that decision, is that your question.

Q. Yes.

A. That was a recognition that I'm saying to him from the people who are on the phone, who are the people that you've entrusted with working through and dealing with this, that they all agree that, and that's what the -- we need more information before that decision, I'm communicating to him that this isn't me, this isn't them, this is his team arriving at this conclusion. And I'm relaying and reporting it to him.

* * *

Q. Okay. Thank you. Also at the bottom of the email, what did you mean it would require substantial political set-up?

A. Well, we had, it was a recognition that Senators Wyden and Merkley had been critical of Cover Oregon and lost confidence in them. It was a recognition that there was potentially an FBI investigation of it. And there was a recognition that the

> Republican Governors' Association had sent out a press release that criticized and called the entire operation and everybody in it into question. That Dennis Richardson had, using an email newsletter, where he was consistently raising questions about it. And that the likelihood that we were going to find a receptive audience for putting more funding into a project that was described as a debacle, and where there was a concern that we were wasting money, and that we had managed it poorly, would require a bit of work.
>
> Q. Do you know if they ever asked for additional funding from CMS?
>
> A. No. In fact -- I don't know. I don't know. I know that as the, this went on, that one of the cost elements that were the criteria was that they had to do it with existing funds.[372]

McCaig testified that there should be a thorough evaluation of any decision. The Technology Options Workgroup performed this evaluation and on March 27, 2014 recommended staying with the existing technology with the FFM as a contingency if any milestones were missed. On April 3, 2014, some of the Governor's campaign advisers drafted a memorandum commenting that after a briefing from Pettit, the Technology Options Workgroup's recommendation was concerning to them and they advised that the Governor gave Pettit more time to explore the technology options.[373] It is therefore unclear why McCaig acted as if a decision had not been made yet in her email on April 7.

6. April 8, 2014: Kitzhaber's political operatives receive updates on moving to the federal exchange

In preparation for another call on April 8, 2014, McCaig emailed Bonetto, copying Raphael, Wiener and Looper, a proposed agenda for the call.[374]

[372] McCaig, Tr. at 107-113.
[373] Email from Tim Raphael to Mark Wiener, Kevin Looper (April 3, 2014) (COGR_SHCBAR_KL_0882-83).
[374] Email from Sean Kolmer to Mike Bonetto (April 8, 2014) (MBG2017872).

From: **Patricia McCaig** [redacted]
Date: Tue, Apr 8, 2014 at 7:02 AM
Subject: 6:00 call tonight -
To: Michael Bonetto
Cc: Tim Raphael [redacted], Mark Wiener [redacted], Kevin Looper [redacted]

Here's what I think we are expecting information on tonight from Alex and Bruce - we all on the same page?

) a financial estimate for moving to the federal exchange
2) a **$ 30 million scope** of work for staying with the current and/or going to Connecticut
3) the pros and cons (financial) of staying with the hybrid process through November, but ready with something in 2015, and
4) a deadline for the IT decision (and the logic for the deadline)

We will do further cost, time, reliability refinements of staying with the current technology and the Connecticut option after we review the information above.

Bonetto forwarded the email to Kolmer, who responded, "to be clear, we will have to run the hybrid process through December in any scenario."[375] McCaig forwarded this agenda to Kitzhaber with the comment that she would "add the question about Oracle and how long we need them. Talk to you after . . ."[376]

McCaig testified about an email she sent to set up the SWAT team call on April 8 at 6:00 p.m. She stated:

> Q. Is this an email from you, is it to the SWAT team on April 8th? Or is that a different group of people?
>
> A. It's the people who were, yes, I guess you could call it the SWAT team. As I said, that morphs into a smaller group with, yes, Mark Wiener, Kevin Looper, and Tim.
>
> Q. Okay. Are you setting up a call for 6 p.m. on April 8th? Given that the email was sent on April 8th and you say here is the information I think we are expecting tonight.
>
> A. Yes. It must be 6 p.m. tonight and 2 in the afternoon. 2 a.m. it says. Oh, it's 7, okay. I'm tracking. All right. All right. Okay.
>
> Q. And Alex Pettit and Bruce Goldberg are also planning on joining the call according to your email? Here's what I think we are expecting information on tonight from Alex and Bruce -- we all on the same page?

[375] *Id.*
[376] Email from John Kitzhaber to Patricia McCaig (April 8, 2014) (McCaig October 15, 2015 Production 249).

A. Right. So it's a follow-up from all of this, yes.

Q. In the earlier emails --

A. Yes.

Q. -- to Kitzhaber?

A. Yes. A deadline for the IT decision, pros and cons.

Q. In the email, you say a financial estimate for moving to the Federal Exchange, a $30 million scope of work for staying with the current and/or going to Connecticut, the pros and cons financial staying with the hybrid process through November, but ready with something in 2015, and a deadline for the IT decision and the logic for the deadline. Do you know who created this list of information for the phone call?

A. I think this was my evolution out of the earlier -- both what the Governor was interested in, the phone call I had on the 7th where these things were coming up. And I think each of these topics had been the subject of much speculation in the press about what was going to happen at the April 10th meeting. So these were all the sort of present issues that people were wondering about.

Q. Were you getting up-to-date information from Alex Pettit and Bruce Goldberg about these items that you list on the call?

A. I think we were going to ask them whether they had some of the -- when could we expect a financial estimate for moving to the Federal Exchange? That was a legitimate question that the Governor certainly would like to know.

Q. Do you know was the technology advisory group being updated as well? Were they on this call?

A. No. The IT committee wasn't on this call.

Q. Do you know if they were being updated with the same information?

A. I had no communication with the IT committee.

Q. But do you know if they were being updated with information?

A. I don't.

Q. At the bottom of the email, you say –

A. The IT committee had not met, this is April 8th, the IT committee, I think their last meeting had been March 31st, and the next one was, the board meeting was going to be on the 10th, and then, I think they were going to meet on the 21st.

Q. At the bottom of the email, you say we will do further cost, time, reliability refinements of staying with the current technology and the Connecticut option after we review the information above. Why were you going, who decided that you would do the refinement to the current technology and Connecticut after you review the information?

A. I'm just so sorry that I said we. This is, this was the direction and the decision that Alex and Bruce were presenting about where they were going. And they were the Governor's team. They were part of, the Governor hired Bruce, they were part of his team.

I was reporting back the things they had identified that were going to be on their plate, that they were going to be addressing moving forward.

* * *

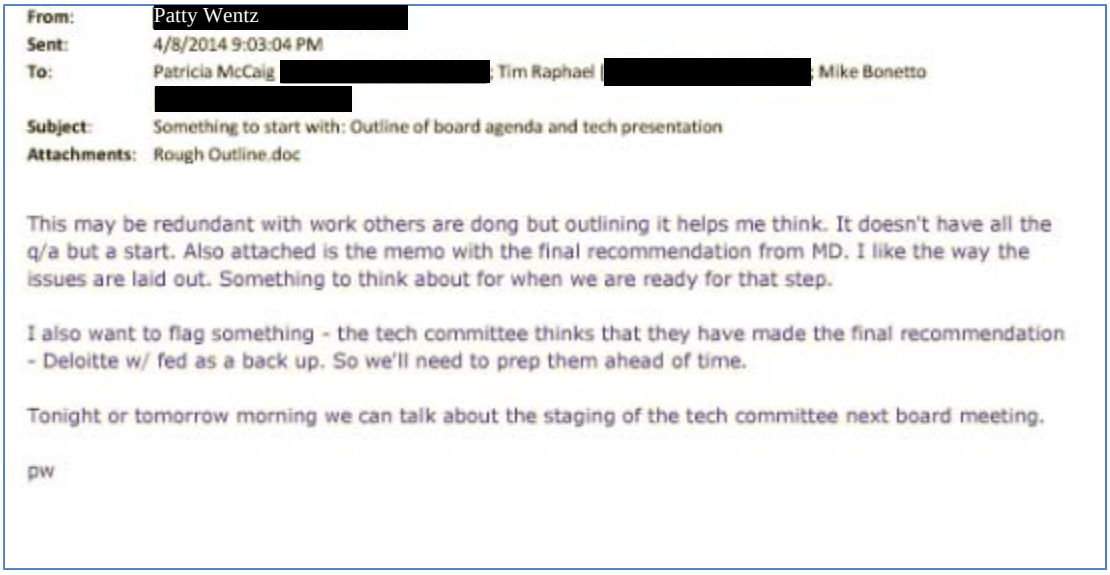
Q. And then during these calls, when you heard these updates from Alex Pettit and Bruce Goldberg, did you have an opinion on the appropriate pathway technology options?

A. I was barely keeping up in trying to articulate what I thought was for the Governor, based on the calls, the primary issues that they were actually discussing that were important and relevant because they were -- so no, I didn't.[377]

McCaig testified about a deadline for the IT decision that was relevant as of April 8, but, at that point, the IT decision had already been made by the Technology Options Workgroup. She also stated that Pettit and Goldberg were part of the "Governor's team."

Before the call on the evening of April 8, Wentz emailed McCaig, Raphael, and Bonetto to distribute an outline that she had been working on for Cover Oregon. She wrote: "I also want to flag something – the tech committee thinks that they have made the final recommendation – Deloitte w/ fed as a back up. So we'll need to prep them ahead of time."[378]

[377] McCaig, Tr. at 113-117.
[378] Email from Patty Wentz to Patricia McCaig, Tim Raphael, Michael Bonetto (April 8, 2014) (MBG2009515).



From: Patty Wentz [redacted]
Sent: 4/8/2014 9:03:04 PM
To: Patricia McCaig [redacted]; Tim Raphael [redacted]; Mike Bonetto [redacted]
Subject: Something to start with: Outline of board agenda and tech presentation
Attachments: Rough Outline.doc

This may be redundant with work others are dong but outlining it helps me think. It doesn't have all the q/a but a start. Also attached is the memo with the final recommendation from MD. I like the way the issues are laid out. Something to think about for when we are ready for that step.

I also want to flag something - the tech committee thinks that they have made the final recommendation - Deloitte w/ fed as a back up. So we'll need to prep them ahead of time.

Tonight or tomorrow morning we can talk about the staging of the tech committee next board meeting.

pw

McCaig told the group that the outline was fine and she knew they were still working on content. McCaig also said that she and Bonetto were planning on having a private discussion after the group call and there were "more likely tomorrow."[379] There were a number of additional conversations and updates on April 8 before the 6:00 p.m. call. On April 8, Wentz emailed McCaig and Raphael and advised that if they switch to the federal exchange, Cover Oregon will have to start notifying the approximately 70,000 Oregonians enrolled in private health insurance coverage through the exchange that they will have to re-enroll using the federal exchange well in advance of November 15, 2014. Wentz said that she was not sure of the industry best practices, but that she believed that these individuals would have to start being notified in the middle of September.[380]

On April 8, 2014, Goldberg and Kolmer had a call with CMS to discuss switching to the federal technology. Later that day, Bonetto forwarded McCaig an email he received from Goldberg about the call with Marilyn Tavenner.[381] In the email, Goldberg wrote there was new information about the option to switch to the federal exchange. Goldberg explained that two weeks earlier, Teresa Miller, an official from CMS, and her team were "very clear that states who choose to go to the FFM will not get any funding etc."[382] Goldberg wrote that CMS had reconsidered that position. He told Bonetto:

> Should we choose to go to the FFM . . . they would like to consider any state that goes to the FFM a state based market. In that regard there will be funding for some functions through 2015. . . . They would continue to be considered a state based exchange and could have their own state entry

[379] Email from Patricia McCaig to Patty Wentz, copying Tim Raphael, Mike Bonetto (April 8, 2014) (MBG2000188-89).
[380] Email from Patty Wentz to Patricia McCaig, Tim Raphael (April 8, 2014) (McCaig October 5, 2015 Production 351).
[381] Email from Bruce Goldberg to Mike Bonetto and Sean Kolmer (April 8, 2014) (MBG2001625).
[382] *Id*.

into the federal market, much like Idaho does now. The state would use the federal technology to enroll people etc.[383]

This change was significant for Oregon. In a deposition, Bonetto testified about why he shared this update from the federal government with McCaig. He stated:

A. I believe it was to better understand what our options were.

Q. If a decision of moving to the Federal exchange was made, would you agree that Marilyn Tavenner would be an individual that needed to be informed?

A. Correct.

Q. Why did you share this update with the Federal Government with Patricia McCaig?

A. Again, I think this was gathering information to understand what our options were.

Q. Why would you, as the Governor's chief of staff, need to know about the call with Marilyn Tavenner -- first, why would you, as the Governor's chief of staff, need to know that Bruce Goldberg had a call with Marilyn Tavenner?

A. To understand the issues involved in potentially making a move to the Federal exchange, the cost, the timeframe, the risk.

Q. And that is a decision that would be made by the Cover Oregon board?

A. The Cover Oregon board.

Q. Why would Ms. McCaig need this information?

A. This was part of the bigger analysis to understand all of that information so she could help brief the Governor.

Q. And, as your understanding, what would she be briefing the Governor on?

A. The options that the IT committee was reviewing.

Q. Earlier in this, you described Patricia McCaig's role in this whole process as -- I don't have the record here, but what would you describe her role in advising the Governor?

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[383] *Id.*

A. I think in assisting in synthesizing information about the options, as well as helping with communication issues within the office.

Q. And you would agree that, as helping with communication issues, she needed to know the day-to-day updates on the IT decisions?

A. I would clarify that they weren't IT decisions. At that time, IT, you know, information, and I would say, yes, she did.[384]

Documents show McCaig—who was supposed to be focusing on communications issues—was responsible for synthesizing information about the technology options for the Governor. Emails obtained by the Committee show McCaig communicated with other campaign advisers to the Governor and advised she was involved in a "substantive issue on Cover Oregon with the [Governor]."[385] The email shows her responsibilities extended beyond communications issues.

On April 8, McCaig emailed the group requesting information about the technology options. She wrote: "Can we quantify or prioritize the relative importance of each of these 4 outcomes (are some more important than the others) and then create a matrix with each IT option, these 4 outcomes PLUS cost, timing and reliability?"[386]

From: Patricia McCaig <[redacted]>
Subject: Question
Date: April 8, 2014 5:25:18 PM PDT
To: Tim Raphael [redacted], Kevin Looper [redacted], Mark Wiener <[redacted]>, Patty Wentz <[redacted]>, Mike Bonetto <[redacted]>

Can we quantify or prioritize the relative importance of each of these 4 outcomes (are some more important than others) and then create a matrix with each IT option, these 4 outcomes **PLUS cost, timing and reliability?** Or has the IT technical already done it?

1. Be financially sustainable
2. Ability to move transformation of the market
3. Create minimum disruption of current enrollees
4. Maximize use of agents and community partners

This email shows McCaig was collecting the information that Kitzhaber requested on April 7, 2014, about the technology decision.[387] This communication occurred more than one week after the Technology Options Workgroup recommended staying with the existing technology, with the FFM as a contingency in case of any missed milestones.

The flurry of communications on April 8, 2014 creates the appearance that the decision to switch to HealthCare.gov occurred that night. Documents show two calls that night—one at 6:00

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[384] Bonetto, Tr. at 26-28.
[385] Email from Christian Gaston to Patricia McCaig, copying Tim Raphael, Scott Nelson (April 14, 2014) (TR000899).
[386] Email from Patricia McCaig to Tim Raphael, Kevin Looper, Mark Wiener, Patty Wentz, Mike Bonetto (April 8, 2014) (McCaig October 5, 2015 Production 356).
[387] Email from John Kitzhaber to Patricia McCaig (April 7, 2014) (McCaig October 15, 2015 Production 230).

p.m. with the Governor's staff, his political operatives, and leadership at Cover Oregon,[388] and a second, private call between Bonetto and McCaig.[389] Bonetto testified that he could not recall what was discussed during that call.[390]

Members of 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. In a statement for a story that contained allegations that Kitzhaber's political advisers "secretly shaped state policy around Cover Oregon," Bonetto said: "[Kitzhaber's] leadership around Cover Oregon resulted in a less risky and less expensive move to the federal exchange, and a reduction in overall operating costs at Cover Oregon."[391] McCaig testified that the move to the federal exchange allowed the Governor to make a definitive statement about the outcome of Cover Oregon. McCaig was asked if "one of the most important things was just for him [the Governor] to have definitive things to say about Cover Oregon?" She stated, "That's a great way of putting it."[392]

At approximately 10 p.m. on April 8, McCaig emailed Bonetto and expressed frustration that Bruce Goldberg made a presentation about the Cover Oregon technology decision to legislators.[393]

From: Mike Bonetto [redacted]
Sent: 4/9/2014 5:13:24 AM
To: Patricia McCaig [redacted]
Subject: Re: Presentation

No...didn't know this is what was presented...

On Tue, Apr 8, 2014 at 9:48 PM, Patricia McCaig [redacted] wrote:
Did you see this? Am I the only one who did not know or understand that Bruce had presented this as a recommendation to legislators last week? While we were all still discussing it? We need to go thru it and make sure that we don't trip ourselves up in the pros and cons. Unfortunately it doesn't start with cost or risk, but does include them in the pros/cons. And does end with requires more cost information.

Bonetto responded, "No . . . didn't know this is what was presented . . . ."[394] Goldberg's PowerPoint presentation contained information about the Technology Options Workgroup participants and individuals that assisted the meetings. The group did not include any of the Governor's staff or political operatives.[395]

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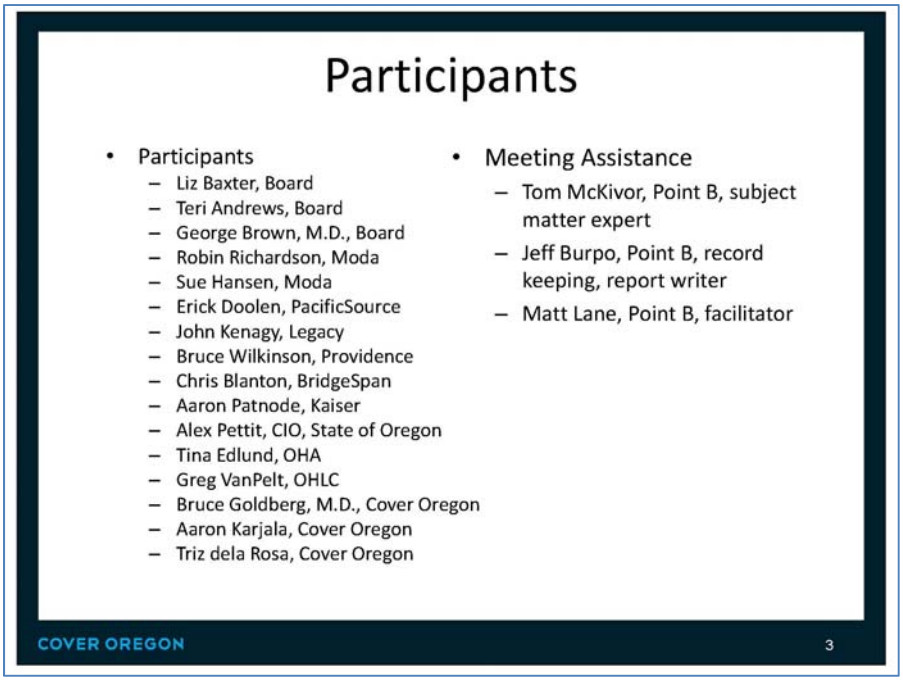
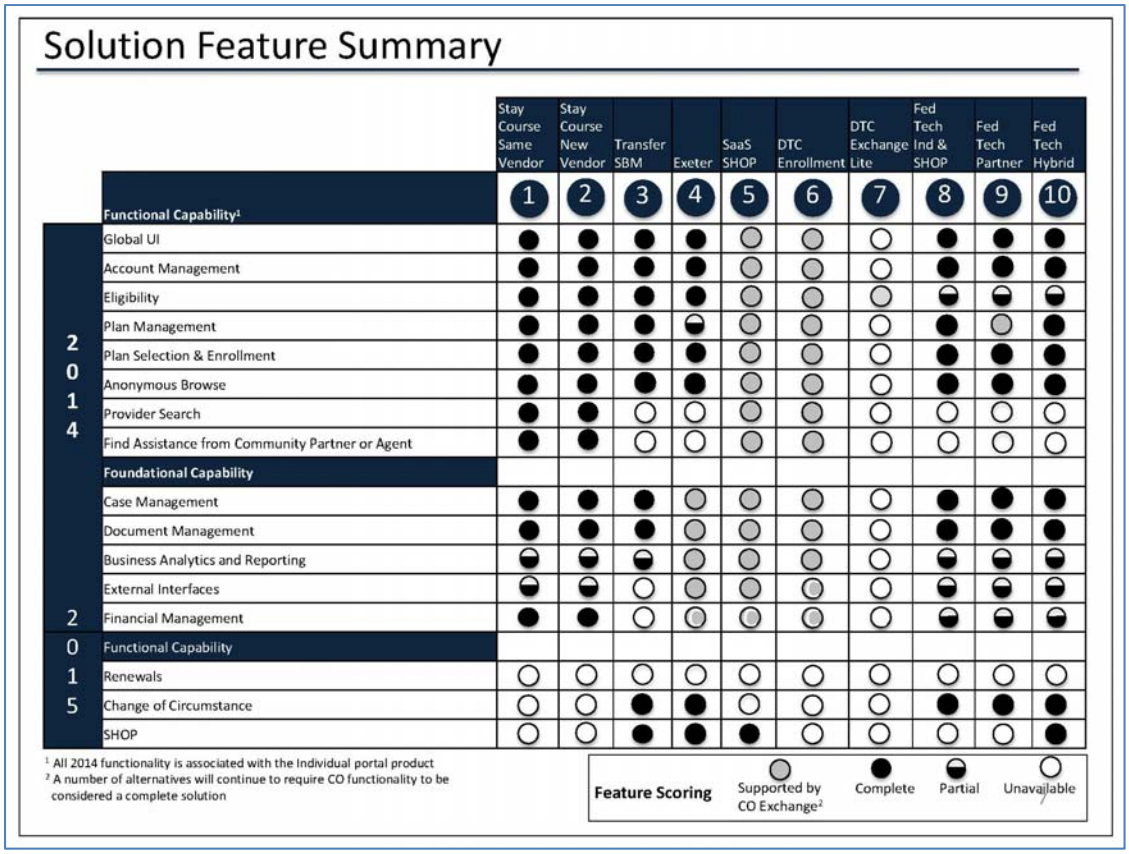
[388] From the emails we uncovered it appears at least the following individuals were on the 6:00 p.m. call: Pettit, Goldberg, McCaig, Raphael, Wiener, Looper, and Wentz. *See* Email from Sean Kolmer to Mike Bonetto (April 8, 2014) (MBG2017872); Email from Patricia McCaig to Mike Bonetto (April 8, 2014) (McCaig October 5, 2015 Production 355); Email from Patricia McCaig to Mike Bonetto (April 8, 2014) (MBG2000396).
[389] Email from Patty Wentz to Patricia McCaig, Tim Raphael, Michael Bonetto (April 8, 2014) (MBG2000188-189).
[390] Bonetto, Tr. at 25.
[391] Nigel Jaquiss, *Blurred Lines*, WILLAMETTE WEEK (Nov. 11, 2014).
[392] McCaig, Tr. at 187.
[393] Email from Patricia McCaig to Mike Bonetto (April 9, 2014) (MBG2050938).
[394] Email from Mike Bonetto to Patricia McCaig (April 8, 2014) (McCaig October 15, 2015 Production 267).
[395] Email from Patricia McCaig to Mike Bonetto, at Slide 3 (April 9, 2014) (MBG2019057-76).



Another slide showed the functionality of the "stay course same vendor" and "stay course new vendor" options.[396]

[396] *Id*., at slide 7.



7. April 9, 2014: McCaig discussed "staging" the decision to move to HealthCare.gov

FINDING:	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.

FINDING:	The Governor's campaign advisers staged the decision to create the appearance that it was the Board's decision to move to HealthCare.gov. In fact, they manipulated the process to make their preferred outcome—moving to HealthCare.gov—the most likely outcome.

On April 9, Patricia McCaig sent an email to Kitzhaber to let him know that "[a]t the IT meeting on the April 21st it is likely the IT Committee will recommend moving to the federal exchange."[397]

[397] Email from Patricia McCaig to Mike Bonetto (April 9, 2014) (McCaig October 15, 2015 Production 283).

From: Patricia McCaig [redacted]
Subject: Update
Date: April 9, 2014 4:59:48 PM PDT
To: John Kitzhaber [redacted]

Governor, here's my update on progress on the IT decision and the Cover Oregon meeting tomorrow. I'm not sophisticated in healthcare/IT talk, but I think I can describe the general path. Let me start with the critical updates/conclusions from last night.

In a nutshell from last night (I know you'll have questions):

1. **Investing further in the Oregon option.** With more current information from Deloitte and the tech folks on the costs and complexity of the Oregon option, the consensus is to let it go. It's not just about the costs, it is also about the complexity, the number of unknowns, the calendar and the risks of failure. We don't see a path to save it.
2. **Utilizing another state's technology.** The Connecticut option is outside our budget by 2x or 3x, would require re-enrollment, may have medicaid issues, and doesn't offer us any substantial benefits and has substantial compatibility issues. The group recommends taking it off the table.
3. **Moving to the federal exchange.** The financial estimate for moving to the federal exchange on the Cover Oregon side is within the CO budget ($20 -$30 m). Moving Medicaid to OHA, same as current service - would cost approx. $ 20 million. Bruce believes the Feds would/could pay 70% of the $ 20m with existing authority. We would take the existing engine from CO and embed it at OHA. In terms of difficulty it "is not plug and play, and it is not sending a man to the moon "- doable. It would require re-enrollment for the CO side. (Checking on whether Medicaid needs to re-enroll, don't think so). The group would recommend transitioning to the federal exchange.
NEW INFORMATION! After working through this process and arriving at the federal exchange recommendation, Bruce shared that he had been in touch with Sebelius's staff yesterday about transitioning to the federal exchange and they had indicated that the feds MIGHT provide states the opportunity to maintain a state face, but use the the federal technology to enroll on health.gov. The state could be the entry way to the federal exchange and the state might be able to manage the market, certify the plans, have whatever plans we want. This is very preliminary (but encouraging?) and not for public discussion. Bruce, Sean, Mike are on it and waiting to brief you.
4. A final decision must be announced/made no later than the end of April, and if possible, sooner, in order to provide adequate time for developing, implementing and testing the technology.

MANAGING/STAGING THE DECISION

1. Bruce and Alex will present an update Thursday to the Cover Oregon Board on the IT options. They would reiterate the key assumptions: within budget and functional by November 2014 and then walk through the process to date, that identified 9, then 3 viable options. They would recommend taking Connecticut off the table, and walk through a matrix with criteria for the two remaining options ,the Oregon option and moving to the federal exchange. **They would conclude that they need more information/work on both options.**
2. The Cover Oregon Board would ask the IT committee to meet again, on Monday April 21st to roll up their sleeves and review additional information on just these two options.
3. The Cover Oregon Board would announce that the IT committee meeting would be public.
4. The CO board would suggest a CO Board meeting for later that same week (April 22, 23, 24) to review the recommendation.
5. In the intervening week before the IT meeting, your team would be working with the feds to explore the Oregon/Federal exchange elements/option, the tech team will be scouring anticipated questions on both the federal exchange and Deloitte's response to the Oregon option, and the communications team would be getting ready for the decision and be able to get ahead of it.
6. At the IT meeting on the April 21st it is likely the IT committee will recommend moving to the federal exchange
7. If there is progress on the Oregon/Fed exchange, we would create an announcement plan around it.
8. Regardless, the Cover Oregon Board would hear and accept the federal exchange recommendation April 22, 23, or 24.

Before sending that email to the Governor, McCaig sent it to Raphael with the subject "Can you read this – I just want to get him something."[398] She forwarded the message to Bonetto the day after she sent it to the Governor.[399] McCaig's email not only identified the IT Committee's decision—to move to the federal technology—but also the approximate date of the decision. With respect to continuing to invest in the "Oregon option," McCaig wrote: "'we' don't see a path to save it." McCaig testified as to why she used the pronoun "we." She stated:

> Q. Okay. Ms. McCaig, now, you said earlier that you regretted using the particular pronoun "we." You used "we" in this email in the first line saying, "We don't see a path to save it." And also in exhibit 12 saying, "We will do further cost time reliability refinement." Who were you referring to when you said "we?"
>
> A. I think it was predominantly Mike Bonetto and me. And to some extent it included, depending upon who was on the call at that time, Bruce Goldberg or Alex. And it was meant to convey to the Governor that it was his team who was proposing these things, not anybody else.
>
> Q. And who was providing the substantive information during those conversations and calls?
>
> A. Primarily if Alex was on, he was providing a level of detail. But Bruce Goldberg, and then Mike Bonetto, sort of in that order.

[398] Email from Tim Raphael to Patricia McCaig (April 9, 2014) (TR000924-25).
[399] Email from Patricia McCaig to Mike Bonetto (April 10, 2014) (MBG2002876-77).

Q. And what were you providing?

A. Thoughtful and anticipatory kinds of questions that they might get as they were talking about these kinds of things. And as they discussed it, then recapturing it, in a way that would allow me to provide, and they knew this, the Governor the most updated, concise, boiled-down version of where we were and what the information was.

Q. Okay. But you didn't provide substantive information?

A. No.[400]

McCaig also testified about what she meant when she wrote the "consensus is to let it go." McCaig stated:

Q. When they say under one, the consensus is to let it go -- the investing further in the Oregon option. With more current information from Deloitte and tech folks on the costs and complexity of the Oregon option, the consensus is to let it go. Do you know what they mean by, what you mean by the consensus is to let it go?

A. I'm reporting to the people on the phone generally think that it's not there, you're not going to be able to go the distance with it and you should let it go.

Q. Who are the people on the phone who think it should be let go?

A. And you should ask them if they were on the phone, I think it's Mike Bonetto, Bruce Goldberg, and Alex Pettit. But I don't know whether Alex was on all of the phone call, the phone call the day before.

Q. So would you say that on April 8th, that's when a decision was made that the consensus was to, let it go?

A. There wasn't a decision made. Nobody is making a decision. As you move through it, I'm evaluating and writing what I heard from people on the phone, what they're going to likely talk about at the board meeting the next day.

And so if Bruce is in front of the board the next day and there are questions or discussions about these and/or from the press, the

[400] McCaig, Tr. at 146-147.

> Governor should not be surprised that this is the kind of thing he's going to hear. Because it's going to be in the press tomorrow. And I --
>
> Q. I guess I was asking you say the consensus was to let it go, was the April 8th call the first time you had heard that the consensus was to let it go –
>
> A. Well, if it's not anywhere else, I would assume so.
>
> Q. But you don't remember?
>
> A. I don't. I wasn't tracking that particularly.[401]

Documents show the Governor's office preferred to move to the federal exchange. On April 10, 2014, Kolmer emailed Kitzhaber, copying Goldberg, Jan Murdock, and Bonetto. Kolmer prepared talking points for the Governor's upcoming meeting with a White House official—Deputy Assistant to the President and Director of Intergovernmental Affairs David Agnew. Kolmer wrote: "Our preference is to keep the functions of a state based exchange with using the backbone of the federal technology to make CoverOregon a success."[402]

[401] *Id*. at 119-120.
[402] Email from Sean Kolmer to John Kitzhaber, copying Bruce Goldberg, Jan Murdock, Mike Bonetto (April 10, 2014) (GOV_HR00071379).

From: KOLMER Sean P * GOV <[redacted]

Sent: 4/10/2014 11:17:41 PM +0000

To: John Kitzhaber [redacted]

CC: "Goldberg, Bruce" <[redacted]; MURDOCK Jan * GOV <[redacted]; BONETTO Mike * GOV <[redacted]

Subject: internal advisory

Gov-

For your conversation with David Agnew tomorrow

You appreciate the efforts of HHS staff who have been extremely helpful for us to understand the choices we have as a state and how we can work together.

You are committed to a path that ensures individual enrollment in commercial health insurance for November.

Our preference is to keep the functions of a state based exchange with using the backbone of the federal technology to make CoverOregon a success. Your team is working closely with CMS to understand pros/cons of this approach over the next week or so

One challenge is how we would fund the state operations and would hope the administration supports some creative options for 2015 and beyond to ensure Oregon is a success.

We have another CMS meeting tomorrow and will send any updates after that call for your call with the Secretary on Monday.

Kolmer testified about the evolution of the Governor's preference to move to HealthCare.gov. He stated he was not sure when that became Kitzhaber's preference. He testified:

> Q. But to the extent that the governor was involved, in your opinion, what was the governor's office role?
>
> A. Our role was to take all the information in, and it was clear we had a preference, and it was clear we had a recommendation, but that was it. The Cover Oregon board had all the responsibility to change the direction of what Cover Oregon was doing.
>
> Q. And you said it was clear you had to preference. What was the preference of the governor's office?
>
> A. The preference for us was to move to the Federally Facilitated Marketplace for the 2015 open enrollment period.
>
> Q. Do you know when that became the preference of the governor's office?

A. I don't remember.

* * *

Q. You mentioned that the governor would occasionally speak to board members. Under what circumstances and why would the governor communicate with board members?

A. The board members were governor-appointed, Senate-confirmed positions, so he had conversations with them as appointees, and he would talk to them about preferences and would advise them on certain things, whether it was about Cover Oregon or not.

It was a very diverse board that had other interests, other than the work of Cover Oregon, that he would work with them on.

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.[403]

Several witnesses testified that the Board made the decision to switch to HealthCare.gov, not the Governor's office, consistent with Oregon law. Documents show, however, the Governor's office undermined the Technology Option's Workgroup and manipulated the process toward their preferred outcome— moving to HealthCare.gov. Documents show the Governor's office disagreed with the Technology Options Workgroup's March 2014 preliminary recommendation to keep the existing technology with the FFM as a back-up, and thereafter leveraged the decision-making process.

Documents show that Goldberg and Pettit did not disclose the political team's preferred outcome to the Cover Oregon Board of Directors, even after it was clear that they were very likely to force a move to HealthCare.gov.[404] Minutes from the Board's April 10, 2014 meeting state:

Dr. Goldberg talked about the Technology Options Workgroup and how they have been engaged in a process over the last month to look at what the best options are for the exchange, and to narrow it down to the singular

[403] Kolmer, Tr. at 52-53 & 165-166.
[404] Oregon Health Insurance Exchange Corporation Board of Directors' Meeting, Minutes (April 10, 2014).

best option that allows Oregonians to apply, enroll, and manage their accounts by November 2014's open enrollment date.[405]

The minutes also show Pettit stated the "Technology Options Workgroup will gather more information and give the final recommendation (including operational implications) to the Board at the end of the month."[406] The workgroup, however, was not gathering information. According to the aforementioned April 16, 2014 email from a member of the Technology Options Workgroup, Aaron Patnode, the workgroup had not been updated on any new developments since their last meeting in March 2014. Cover Oregon leadership, primarily Goldberg and Pettit, were coordinating with the Governor's staff and political operatives rather than the Technology Options Workgroup. In a deposition, Goldberg testified that he participated in conversations about preparing for the Technology Options Workgroup meeting and believed that Pettit was having "one-on-one phone calls" with them. He stated:

Q. Were you ever in any conversations about staging the final meeting of the technology advisory group?

A. Yes. I was on some calls about how to present that information, yes.

Q. What was discussed during those phone calls?

A. I think how to be able to present what was complicated complex information in a way that –

Q. To the technology advisory group? To the technology advisory group meeting -- the technology advisory group, who was a member of the technology advisory group, were they experts in IT?

A. Some were experts in IT, some were board members.

Q. Who participated in these phone calls to discuss how to present information to them?

A. Myself; when Alex came on, Alex; Mike and Sean Kolmer, sometimes Patricia.

Q. Why did you feel that it needed to be discussed how to present information to them about the technology options?

A. You know, my sense at the time, again, was that, you know, this was a committee for the board. It was also being looked at very

[405] *Id*. at 2.
[406] *Id*.

> publicly that -- sometimes technology people talk to technology people in ways that the rest of us don't understand and I felt it was really important to be able to have these meetings presented in such a way that not only the technology people understood it, but the general public did. It was a way of getting to me some sort of a gut check on were we considering the right things, had all of the assumptions been there, how would this be looked at, would there be some credibility to this process.
>
> Q. Do you feel like that interfered with the information the technology advisory group was given, if it was being vetted through this other group of individuals?
>
> A. No, I don't, because that group felt really free to call Alex and have -- I know a lot of them had one-on-one phone calls with Alex. I felt that group, pretty much, got a lot of the information that that needed. I don't think it impeded with that.[407]

The Technology Options Workgroup's meetings were not public meetings, except for the final meeting on April 24, 2014, where the group agreed to switch to HealthCare.gov. According to a recording of the meeting, it lasted approximately 36 minutes, and mostly consisted of a presentation by Pettit.[408] On March 27, the workgroup made the recommendation to continue to develop and deploy the current technology solution with a new vendor while actively retaining the ability to migrate to HealthCare.gov as a contingency.[409] On March 31, the workgroup had a status monitoring meeting.[410] On April 3, 2014, Wentz emailed McCaig and Raphael about the workgroup meetings. She wrote:

> Elizabeth Hayes wants to know if the tech group meetings are public and when they are next meeting and if they are not public why not. The tech group is internal advisory and their work is done. My preference would be to not address this until we can talk about what's next and what the public announcement will be if any. After the committee hearing can we touch base?[411]

On April 6, 2014, McCaig emailed Bonetto and asked why the technology meetings were not public and whose decision it was to hold them in private.[412] Bonetto responded that the technology group was an advisory team for Bruce Goldberg and did not need to meet in

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[407] Goldberg, Tr. at 107-108.
[408] Technology Options Workgroup, Meeting Recording (April 24, 2014).
[409] Pettit, May 8, 2014 Cover Oregon Final Report, at 7.
[410] *Id*. at 3.
[411] Email from Patty Wentz to Tim Raphael, Patricia McCaig (April 3, 2014) (McCaig October 5, 2015 Production 236).
[412] Email from Michael Bonetto to Patricia McCaig (April 7, 2014) (MBG2005105-06).

public.[413] At the April 10, 2014 Cover Oregon Board of Directors meeting, Liz Baxter requested to Pettit that the technology group meet in public.[414]

In a transcribed interview, Pettit stated that many of the members of the Technology Options Workgroup were uncomfortable with the idea of holding the final meeting in public. Pettit had to prepare the group in advance for the meeting and advise them as to what to expect. He testified:

> Q. So you called the members of the workgroup in advance of that last April 24th meeting that was public and talked to them about the meeting?
>
> A. Yes, ma'am, I did, and to led them know what they could expect, where the meeting with going to be held there in the building, where the -- you know, that the press would be there, you know, certainly that I wasn't going to tell them not to talk to the press. On the other hand, they were certainly under no obligation to talk to the press, because they were not public officials. They held no -- they were volunteers.
>
> Q. And you said that this meeting needed to be public, yet it seems like you believed a lot of technology experts on the committee would be kind of concerned about having that public forum. So why did it need to be public?
>
> A. Well, I didn't believe it needed to be public.
>
> Q. Who did?
>
> A. It was the desire, as I got it from the Cover Oregon Board, that the next meeting be a public meeting for the Technology Options Workgroup. So I thought it was a bad idea. I never -- I didn't think that was at all a good idea, but, you know, I said, All right, give me the time so I can work with the folks so that they can be comfortable with a public venue and so this will work out for us; but no. I didn't think it needed to be and I didn't think it fair to ask them to do that.[415]

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[413] *Id*.
[414] Oregon Health Insurance Exchange Corporation Board of Directors' Meeting, Minutes, at 3 (April 10, 2014).
[415] Pettit, Tr. at 250-251.

8. Kitzhaber's political operatives edited PowerPoint for the Technology Options Workgroup meeting

After McCaig emailed Kitzhaber on April 9, 2014 and stated, "Cover Oregon would hear and accept the federal exchange recommendation April 22, 23, or 24,"[416] she told the Governor's staff they were well-positioned and things were going as planned.

- On April 10, 2014, after a Cover Oregon Board of Directors meeting, Christian Gaston, a campaign adviser for the Governor, emailed McCaig with a list of questions raised by Cover Oregon's transfer to the federal exchange. McCaig responded: "Great. Got the outcome we needed from the board. All systems go. We have slot to move the next week." [417] Christian replied: "Yeah, the board hit all the points well and Nick made note of the open meeting. Great outcomes."[418]

- On April 11, 2014, McCaig emailed Bonetto and Dmitri Palmateer and wrote, "[i]t could not be better positioning" and "[w]e have a week to start leading the stories instead of responding."[419]

- On April 14, 2014, McCaig emailed Kitzhaber and Bonetto, copying Raphael, forwarding a message she had received from a friend: "Hey last week's O coverage was good. I saw the turnaround strategy at work: adults in charge, consultant fee cap, options examined, one already discarded & a deadline. All good."[420] McCaig wrote to Kitzhaber and Bonetto: "Exactly what we hoped for, and we need the same discipline the next two weeks . . . ."[421]

McCaig and others also continued to coordinate with Cover Oregon leadership on a number of calls,[422] collect information about moving to the federal technology,[423] and edit the PowerPoint presentations for the Technology Options Workgroup meeting and the Cover Oregon

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[416] Email from Patricia McCaig to Mike Bonetto (April 9, 2014) (McCaig October 15, 2015 Production 283).
[417] Email from Christian Gaston to McCaig, Raphael (April 10, 2014) (TR000425).
[418] *Id*.
[419] Email from Patricia McCaig to Mike Bonetto and Dmitri Palmateer (April 11, 2014) (MBG2004490).
[420] Email from Patricia McCaig to John Kitzhaber, Mike Bonetto, copying Tim Raphael (April 14, 2014) (MBG200609).
[421] *Id*.
[422] *See*, *e.g*., Email from Patricia McCaig to Mike Bonetto, Tim Raphael, Dmitri Palmateer (April 10, 2014) (McCaig October 15, 2015 Production 326); Email from Patricia McCaig to Patty Wentz (April 10, 2014) (McCaig October 15, 2015 Production 329); Email from Patricia McCaig to Mike Bonetto (April 10, 2014) (McCaig October 15, 2015 Production 325); Email from Patty Wentz to Patricia McCaig and Tim Raphael (April 14, 2014) (McCaig October 15, 2015 Production 357); Email from Mike Bonetto to Patricia McCaig (April 14, 2014) (McCaig October 15, 2015 Production 358); Email from Joli Whitney to Grace Roth (April 21, 2014) (GOV_HR00079122); Email from Grace Roth to Joli Whitney (April 22, 2014) (GOV_HR00078974-75); Email from Grace Roth tto Joli Whitney (April 23, 2014) (GOV_HR00039389-90).
[423] *See*, *e.g*., Email from Tina Edlund to Bruce Goldberg, Mike Bonetto, Sean Kolmer, copying Alex Pettit and Patty Wentz (April 9, 2014) (GOV_HR00041636-37).

Board of Directors meeting.[424] Bonetto testified about why he and campaign advisers edited the PowerPoint presentations. He stated:

> Q. Did you ever edit any PowerPoint presentations for the technology advisory group?
>
> A. I do recall reviewing them. I can't recall if I actually made any edits or not.
>
> Q. Are you aware of any other campaign advisers editing PowerPoint presentations for the technology advisory group?
>
> A. I think this group did review and make edits. I would say that these were edits that were made based on, you know, communication issues, from a communication standpoint.[425]

Kitzhaber's staff and campaign advisers focused on how the budget and cost information about the technology options were presented. For example, Bonetto sent an early draft of the PowerPoint presentation for the final Technology Options Workgroup meeting to McCaig, Raphael, Kolmer, Wentz, and Palmateer on April 14, 2014.[426] The next morning, on April 15, 2014, Raphael emailed McCaig about the presentation. He asked if she was:

> [T]racking the budget numbers? I thought that Cover Oregon had a $50 million budget for everything in 2014, not just IT, and that we had $20-30 million remaining for IT . . . now it looks like the IT budget is $50 million and we have $5 million left???[427]

The following day, on April 16, Kolmer sent Bonetto, copying McCaig, Raphael, Wentz, and Palmateer, more information about the budget information for Cover Oregon. He explained that after talking to Goldberg, the $5 million figure was not completely accurate as Goldberg "was expecting to trim other aspects of CO budget to get additional WITHIN existing resources to make any move necessary."[428]

The email creates the appearance that Kolmer believed Goldberg expected to make spending reductions for Cover Oregon, so any technology option would be within Cover Oregon's budget and existing resources. Kolmer subsequently wrote: "Bottom line: We should not have AP [Alex Pettit] only present the IT budget as the reason for the decision. He should

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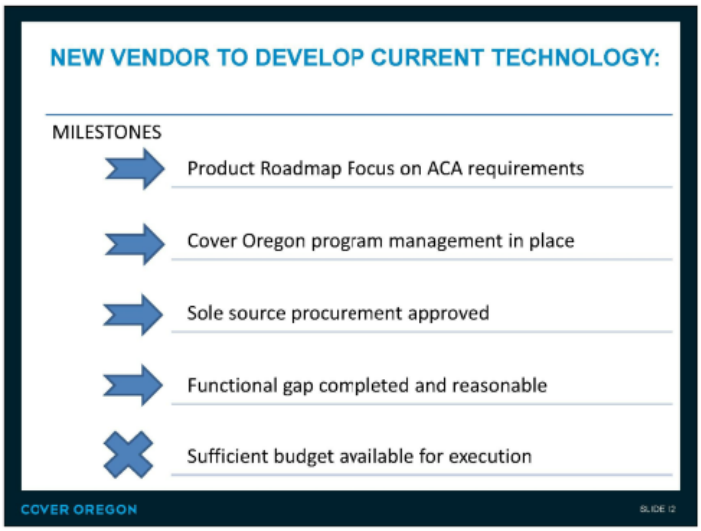
[424] *See* Email from Patricia McCaig to Mike Bonetto (April 22, 2014) (MBG2000415-439); Email from Patricia McCaig to Mike Bonetto (April 22, 2014) (MBG2012214-12238).
[425] Bonetto, Tr. at 30.
[426] Email from Mike Bonetto to Patricia McCaig, Tim Raphael, Sean Kolmer, Patty Wentz, Dmitri Palmateer (April 15, 2014) (MBG2001575-93). There appears to be inconsistent time stamps on some of the materials produced and it therefore is likely this email was sent at 8:31 PM PDT on April 14, 2014 rather than April 15, 2014. *See*, *e.g.*, Email from Sean Kolmer to Mike Bonetto (April 16, 2014) (McCaig October 15, 2015 Production McCaig 383).
[427] Email from Tim Raphael to Patricia McCaig, Re: Draft from Alex (April 15, 2014) (TR000421).
[428] Email from Sean Kolmer to Mike Bonetto, copying Patricia McCaig, Tim Raphael, Patty Wentz, and Dmitri Palmateer (April 16, 2014) (MBG2008935).

get those 20% estimates to also use and then it can be part of the whole package for the CO Board."[429]

In a deposition, Kolmer could not recall what he meant when he wrote, "We should not have AP only present the IT budget as the reason for the decision."[430] The email shows, however, that the group was considering how to justify the switch to HealthCare.gov. Hamstreet was responsible for gathering the budget information for Cover Oregon, and on April 17, McCaig asked to speak with him after the budget information was clear.[431]

Later on April 16, Bonetto sent an updated slide deck for the Technology Options Workgroup meeting from Pettit to McCaig, Raphael, Kolmer, Wentz, and Palmateer.[432] A draft slide that was ultimately cut from the final version showed the "sufficient budget available for execution" milestone was unmet.[433]



The draft slide shows that at this point in time, the only reason Pettit could conceive of to justify the switch to HealthCare.gov was the budget. Ultimately, to explain why the Technology Options Workgroup's recommendation to stay with the current technology was being abandoned, the Cover Oregon Final Report from May 8, 2014 stated:

> In summary, the timeline necessary introduces substantial risk to the project while assuming capabilities which Cover Oregon does not current have, and allows little margin for error. Not all the necessary functionality can be completed by the November 2014 deadline. Finally this option

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[429] *Id*.
[430] Kolmer, Tr. at 115.
[431] Email from Clyde Hamstreet to Patricia McCaig (April 17, 2014) (McCaig October 15, 2015 Production 431); Email from Mike Bonetto to Patricia McCaig (April 18, 2014) (McCaig October 15, 2015 Production 438-39).
[432] Email from Mike Bonetto to Patricia McCaig, Tim Raphael, Sean Kolmer, Patty Wentz, Dmitri Palmateer (April 16, 2014) (McCaig October 15, 2015 Production 403-420).
[433] *Id*. at Slide 12.

exceeds the resources of Cover Oregon. This option failed the reasonable gap analysis trigger previously identified.[434]

Goldberg testified as to whether he was involved in any discussions about what information Pettit should present as the basis for the switch to HealthCare.gov. He stated:

> Q. Were you involved in any discussions regarding what Alex Pettit should present as the reason for the switch to healthcare.gov?
>
> A. I was involved in a lot of the discussions about how to best present the information from the technology committee.
>
> Q. Who else participated in these, the technology committee and -- anybody else?
>
> A. Well, after that I think there were discussions with Alex and Clyde and Mike Bonetto and Patricia McCaig about how best to present some of that information.
>
> Q. Did you ever see members of the governor's office -- you know, Ms. McCaig, Bonetto or those other employees -- edit Power Point presentations that were presented to the board of directors?
>
> A. From time to time there were suggestions made about those Power Point presentations, yes.[435]

The Technology Options Workgroup presentation went through a number of revisions, and McCaig sent Bonetto an updated draft version of the presentation on April 22, 2014. In one email, she wrote: "I've made changes in red so people can track – some will require discussion . . . . Let's decide if we want this to go out before 4:00."[436]

One of the slides that changed substantially during the revision process was the slide presenting information about the cost for the migration to the federal technology.[437]

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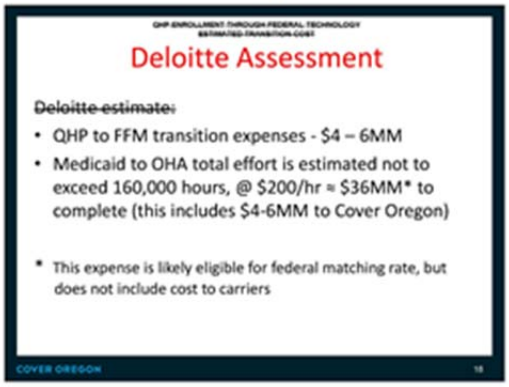
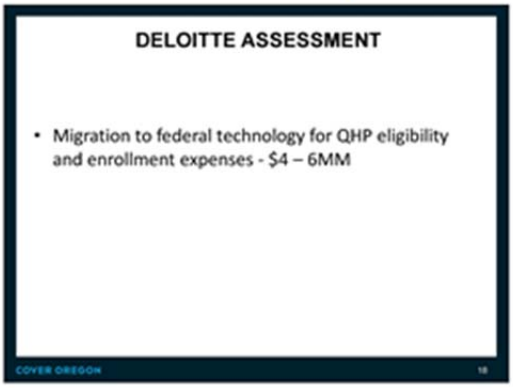
[434] Pettit, May 8, 2014 Cover Oregon Final Report, at 9.
[435] Goldberg, Tr. at 160.
[436] Email from Patricia McCaig to Mike Bonetto (April 22, 2014) (MBG2000415-438).
[437] *Id*. at Slide 18; Cover Oregon Technology Recommendation PowerPoint Presentation, Alex Pettit, Ph.D., Acting Chief Information Officer (April 24, 2014).

Slide 18
Draft C from April 22, 2014



Slide 18
Final Presentation from April 24, 2014

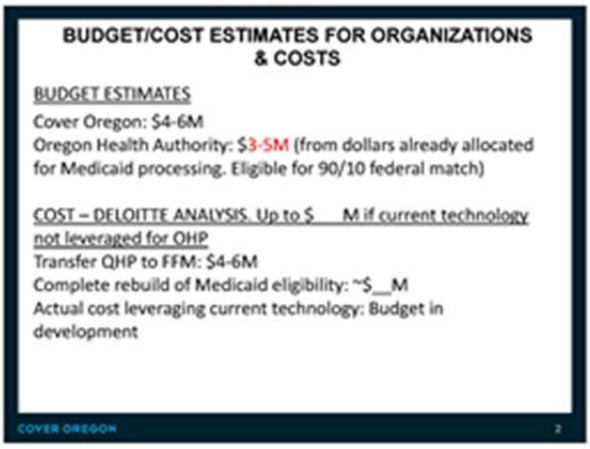


In the April 22 version of the slide, there was more information about the cost of transitioning Medicaid from Cover Oregon to the Oregon Health Authority. Some of this information was cut from the final presentation.

Documents show there were concerns about how to present the cost of moving to the federal exchange. For example, on April 23, 2014, McCaig told Bonetto that the current version of the slides on the cost of utilizing the federal technology "don't work for me either – came from Patty." McCaig attached two slides to her email.[438]

Slide 18

Slide 19



The documents show the total cost of transitioning to the federal exchange was still unknown. They also show Kitzhaber's staff and campaign advisers influenced what information

[438] Email from Patricia McCaig to Michael Bonetto (April 23, 2014) (MBG2000998-1002).

was presented to the Technology Options Workgroup at their final meeting and how the information was delivered.[439]

McCaig also coordinated with Kolmer, the Governor's health policy advisor who was working with CMS to discuss the details of the switch to HealthCare.gov.[440] In an April 20 email, McCaig asked Kolmer a number of questions about the switch to HealthCare.gov, including: (1) commitment from CMS to pay for the IT costs for the Medicaid system; (2) total amount of money spent on Cover Oregon; (3) how the responsibilities will be divided between Cover Oregon and CMS for the exchange; (4) information about how much of the current investment in the IT platform can be reused; and (5) whether CMS will offer support when the decision is announced to switch to HealthCare.gov.[441] Kolmer replied:

> We already have commitment from them and they already know we want to announce federal funds to assist in any additional enhancements to make the system functional for Medicaid. They are comfortable with us saying these costs are eligible for a 90/10 match. They will not want us to peg a number but talk about the federal share . . . .[442]

The Board voted to move to HealthCare.gov five days later.

9. Kitzhaber's political operatives edited PowerPoint for the Board of Directors' meeting

At the April 25, 2014 Cover Oregon Board of Directors meeting, the decision whether Cover Oregon would stay with the state-supported IT platform or move to HealthCare.gov was put to a vote. Members of the Board of Directors had been relying on the recommendation of the Technology Options Workgroup, and as previously discussed, they met on April 24, 2014 and "decided" that Cover Oregon should switch to HealthCare.gov. On April 25, 2014, after the Board heard Pettit's presentation, Hamstreet "recommended that the Board accept the IT recommendation of moving to the forward with the federal technology" and the Board accepted the recommendation.[443]

Kitzhaber's political operatives edited the presentation for the Cover Oregon Board of Directors meeting. On April 24, Kolmer emailed McCaig, Raphael, Bonetto, Wentz, and Harmon Johnson. He attached a draft presentation for the Board meeting and said: "do as you will with this and I will be ready at the Board."[444] Kolmer told them they should have seen this

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[439] On April 23, 2014, Bonetto sent McCaig a close to final version of the PowerPoint presentation for the Technology Advisory Group meeting, and McCaig said: "We are making progress, but I'm a bit nervous. Especially about Friday." Bonetto responded, "Agree…it's certainly better than being especially nervous about Wed, Thurs AND Fri." Email from Mike Bonetto to Patricia McCaig (April 23, 2014) (MBG2005550-51).
[440] Email from Sean Kolmer to Patricia McCaig (April 20, 2014) (McCaig October 15, 2015 Production 473).
[441] *Id*.
[442] *Id*.
[443] Oregon Health Insurance Exchange Corporation Board of Directors' Meeting, Minutes, at 3 (April 25, 2014).
[444] Email from Sean Kolmer to Patricia McCaig, Tim Raphael, Michael Bonetto, Harmon Johnson, Patty Wentz (April 24, 2014) (McCaig October 15, 2015 Production 732-53).

draft presentation earlier in the week (before the Technology Options Workgroup met on April 24) because the language in the presentation "introduces threads" and needs work.[445] The group condensed a lot of Hamstreet's proposed slides for his presentation to the Board.[446]

Goldberg testified about the effect of the switch on Oregonians. He stated:

> Q. Can you describe what the impact on switching to healthcare.gov would have on Oregon's customers and carriers?
>
> A. Yes. I mean, there was going to be an impact on -- certainly there were a number of carriers. We know the number. I believe I had flipped it -- that it was about four or five that were not working with the federal exchange. There were about 11 that were. So they already the interfaces with the federal exchange.
>
> For those carrier that were not currently on the federal exchange, it was going to be a fairly substantive impact on them, where that would have to build interfaces to the federal exchange. I think for consumers there was a substantial impact as well, in that, for consumers -- and this is where I was transitioning out –
>
> Q. Right.
>
> A. -- but my understanding was that consumers would have to reenroll, rather than have a very quick way to just renew. They would have to reenroll with the federal technology. So, yeah, there were concerns.
>
> Q. I just want to make sure it's clear: It's very [sic] person who enrolled in a non-Medicaid plan would have to reenroll?
>
> A. That was my understanding. Rather than simply renew, they would have to reenroll, but whether there was some technological way to work that out after that, I don't know.[447]

10. May 8, 2014 Cover Oregon Final Report

After the Technology Options Workgroup and the Board of Directors voted to switch to the federal technology, Pettit issued a Cover Oregon Final Report on May 8, 2014.[448] In the report, Pettit listed the Committee members and noted that the meetings "were supported with

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[445] *Id*.
[446] *See* Email from Michael Bonetto to Patricia McCaig (April 25, 2014) (MBG200452-481); Email from Mike Bonetto to Patty Wentz, Sean Kolmer, Patricia McCaig, Tim Raphael, Nkenge Harmon Johnson (April 24, 2014) (McCaig October 15, 2015 Production 755-780); Email from Patricia McCaig to Mike Bonetto (April 24, 2014) (McCaig October 15, 2015 Production 791-819).
[447] Goldberg, Tr. at 166-167.

input from third party consultants engaged by Cover Oregon including Point B Management Consulting, Maximus, and Deloitte."[449] The list of Committee members included the names of 17 individuals,[450] but it omitted the names of Kitzhaber's campaign consultants. The only member of Kitzhaber's staff on the list was Sean Kolmer.[451] In fact, the report gave no indication that Kitzhaber's campaign consultants were involved in preparing for the Technology Options Workgroup meeting or the Board of Directors meeting.[452]

FINDING: The Cover Oregon Board of Directors was not provided with complete and accurate information about the different technology options.

In the Cover Oregon Final Report, Pettit said the decision was based on analyzing the risk, cost, and schedule of each option.[453] Documents show, however, they needed to further refine all of these factors. The report claimed that moving to the federal technology would cost about $4-6 million and keeping the existing technology would cost about $78 million.[454] These estimates were questionable for a number of reasons:

- On February 10, 2014, Deloitte reported that the cost to stay the course, keep the technology with a new vendor would cost $22M for 195K hours in 2014 and an additional 150K hours would be required in 2015. Oracle would also need to participate in the transition, enhancement, remediation and production through June 2014.[455]

- On May 10, 2016, Oregon submitted a letter to the Committee stating that "Deloitte's preliminary report concluded that if Cover Oregon stayed the course with Oracle, it would take nearly two more years to implement a functional system at a cost of an additional $45 million," and cited to Deloitte's February 10, 2014 report.[456] The letter does not discuss the $78 million figure presented to the Cover Oregon Board of Directors on April 25, 2014 and does not account for the work performed by the technology team after the Deloitte report was issued on February 10.

- Oracle, Deloitte, Cover Oregon, and other vendors continued to work on fixing the current technology after February 2014. Throughout February, March, and April, technical experts met on Saturdays and Sundays to fix bugs and run tests. It is therefore likely that the cost decreased between February and April 2014.

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[448] *See* Pettit, May 8, 2014 Cover Oregon Final Report.
[449] Pettit, May 8, 2014 Cover Oregon Final Report, at 1.
[450] *Id.* at 2.
[451] *Id*.
[452] *Id*.
[453] *Id*. at 10.
[454] *See* Cover Oregon Technology Recommendation, Alex Pettit, Ph.D., Acting Chief Information Officer (April 24, 2014), *available at* http://www.scribd.com/doc/220131746/Cover-Oregon-Final-Tech-Meeting.
[455] Deloitte, Policy Alternative Assessment Preliminary Report, Cover Oregon, at 9 (Feb. 10, 2014) (GOV_HR00043480-558).
[456] Letter from Elliot S. Berke, Berke Farah LLP to the Honorable Jason Chaffetz, Chairman, the Honorable Elijah Cummings, Ranking Member, Committee on Oversight and Government Reform (May 10, 2016).

- The cost proposal for keeping the current technology and moving to a new vendor included extraneous items such as additional functionality not mandated by the ACA. For example, a matrix created by Goldberg for Kitzhaber in March 2014 comparing the option to keep the current technology versus switching to the federal technology stated that the current technology has the ability "to customize to meet state, carrier, partner, agent, consumer needs," and the federal technology had "little ability to customize. Agents and community partners will have limited use."[457] In the summary section, for the federal technology option, Goldberg wrote: "less ability to customize and may have less enrollment. Potentially less consumer satisfaction."[458] Additionally, the federal option "means a loss of full integration of Medicaid and QHP."[459] An April 22, 2014 article in an Oregon newspaper said: "Moving to the federal health insurance exchange means a loss of control and less capability – think of it as a two-wheel-drive Chevy Nova compared to a Mercedes SUV."[460]

- The $4-6 million estimate for moving to HealthCare.gov did not include the cost to shift the Medicaid eligibility system used for Cover Oregon to OHA. An earlier version of the PowerPoint presentation for the Technology Options Workgroup did include the cost estimate for the shift the Medicaid eligibility system.[461]

- On April 26, 2014, the day after the Board of Directors voted to switch to the federal technology, Sarah Miller (Cover Oregon) sent Tina Edlund and Sean Kolmer a "Cash Flow Analysis" spreadsheet indicating that the projected costs for the FFM project were $43,744,00.[462]

It is unclear why Pettit only used the Deloitte cost estimates in his presentation to the Cover Oregon Board of Directors on April 25, and in the Cover Oregon Final Report. Documents show that entities other than Deloitte analyzed cost information. Point B, a consulting firm hired to help analyze the technology options for Cover Oregon, created pro forma cost estimates that were distributed to the Technology Options Workgroup on March 26, 2014, just days before they made their recommendation to stay with the current technology and use the FFM as a back-up.[463] Point B's pro forma cost estimate for moving to the federal exchange estimated the three-year total cost between $171 million and $175 million, which included the business operations costs, recurring costs such as salaries, etc.

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[457] Email from Bruce Goldberg to Mike Bonetto, Sean Kolmer, Bruce Goldberg, Tina Edlund (March 25, 2014) (MBG2028008-11).
[458] *Id*.
[459] Oregon Health Insurance Exchange Corporation Board of Directors Meeting, Minutes (April 25, 2014).
[460] Nick Budnick, Cover Oregon budget crunch overshadows whether to fix bug-ridden health insurance exchange or go federal, THE OREGONIAN (April 22, 2014).
[461] Email from Patricia McCaig to Mike Bonetto, at Slide 18 (April 22, 2014) (MBG2000415-438).
[462] Email from Sarah Miller to Tina Edlund, Sean Kolmer (April 26, 2014) (GOV_HR00073004-86).
[463] Email from Laura Hutchings to Aaron Patnode, Liz Baxter, Sue Hansen, Gregory Van Pelt, B. Peacock, John Cimral, A. Acree, J. Burpo, George Brown, Bruce Wilkinson, Chris Blanton, Robin Richardson, John Kenagy, Erick Doolen, M. Lane, Tom McKivor, J. Jennings, Alex Pettit, Triz delaRosa, Galen Gamble, Bruce Goldberg, Aaron Karjala, Richelle Borden, Sean Kolmer, Tina Edlund, Joli Whitney (March 26, 2014) (GOV_HR00050258-66).

Draft Costs

Pro Forma (Early Estimates): *Assumes Cover Oregon immediately moves to the FFM solution and maintains current technology through Q1 2015 to support 2014 enrollments.*

Alternative 9 Pro Forma: Immediate Move to Federally Facilitated Marketplace Partnership

Description	2014		2015		2016		3-Year Total	
	Low	High	Low	High	Low	High	Low	High
Business Operations Total[1]	$ 31.0	$ 31.0	$ -	$ -	$ -	$ -	$ 31.0	$ 31.0
Information Technology								
Non-Recurring Costs								
Professional Services								
Oracle (Current Technology Development)	13.0	13.0	-	-	-	-	13.0	13.0
New Systems Integrator (Transition to FFM)	4.0	6.0	-	-	-		4.0	6.0
Miscellaneous	4.0	5.0	-	-	-	-	4.0	5.0
Solution Development Total	21.0	24.0	-	-	-	-	21.0	24.0
Solution Production Support								
New Systems Integrator	-	-	-	-	-	-	-	-
Oracle	9.0	10.0	-	-	-	-	9.0	10.0
Solution Production Support Total	9.0	10.0	-	-	-	-	9.0	10.0
Professional Services Total	30.0	34.0	-	-	-	-	30.0	34.0
Hardware	-	-	-	-	-	-	-	-
Software	-	-	-	-	-	-	-	-
Non-Recurring Cost Total	**30.0**	**34.0**	**-**	**-**	**-**	**-**	**30.0**	**34.0**
Recurring Costs								
IT Salary & Benefits	3.0	3.0	-	-	-	-	3.0	3.0
Licensing and Services	9.0	9.0	3.5	3.5	-	-	12.5	12.5
Public Site Maintenance	1.5	1.5	-	-	-	-	1.5	1.5
Recurring Cost Total	**13.5**	**13.5**	**3.5**	**3.5**	**-**	**-**	**17.0**	**17.0**
Information Technology Total	**43.5**	**47.5**	**3.5**	**3.5**	**-**	**-**	**47.0**	**51.0**
FFM Public Cost								
QHP FFM SaaS[2]	-	-	24.0	24.0	29.0	29.0	53.0	53.0
OHP[3]	-	-	20.0	20.0	20.0	20.0	40.0	40.0
Cover Oregon	-	-	TBD	TBD	TBD	TBD	TBD	TBD
FFM Public Cost Total	**-**	**-**	**44.0**	**44.0**	**49.0**	**49.0**	**93.0**	**93.0**
Cover Oregon Total	$ 74.5	$ 78.5	$ 47.5	$ 47.5	$ 49.0	$ 49.0	$ 171.0	$ 175.0

[1]Business Operations costs include Call Center and Marketing functions that could be negotiated upward with the Feds
[2]Federally Facilitate Marketplace provides Software as a Service technology paid by carriers @ 3.5%
[3]Based on OHA assessment for Alternative 2. These costs could go higher with Alternative 9.

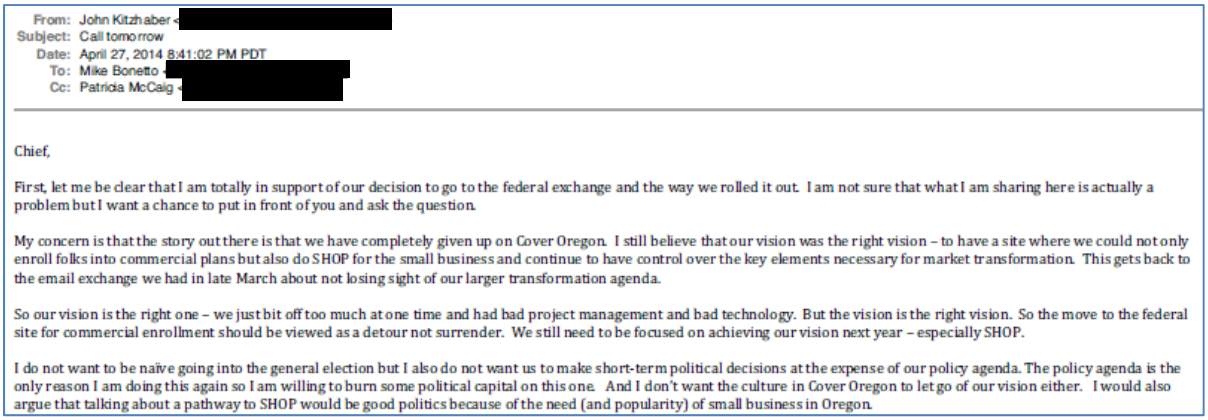
DRAFT

B. The aftermath of the decision to switch to HealthCare.gov

FINDING: After the Board voted to move to HealthCare.gov, Kitzhaber's staff and campaign advisers stayed involved in Cover Oregon.

Documents show that after the Cover Oregon Board of Directors voted to switch to the federal exchange, Kitzhaber's staff and campaign advisers stayed involved in Cover Oregon. A few days after the Board of Directors April 25 meeting, Kitzhaber's political operatives were concerned that the decision to switch to the federal exchange would be weakened or changed. On April 27, 2014, Kitzhaber emailed Bonetto, copying McCaig, to express his support for "their" decision to go to the federal exchange and the way "they rolled it out."[464]

[464] Email from John Kitzhaber to Mike Bonetto, copying Patricia McCaig (April 27, 2014) (McCaig October 15, 2015 Production 884).



From: John Kitzhaber <[redacted]
Subject: Call tomorrow
Date: April 27, 2014 8:41:02 PM PDT
To: Mike Bonetto <[redacted]
Cc: Patricia McCaig <[redacted]

Chief,

First, let me be clear that I am totally in support of our decision to go to the federal exchange and the way we rolled it out. I am not sure that what I am sharing here is actually a problem but I want a chance to put in front of you and ask the question.

My concern is that the story out there is that we have completely given up on Cover Oregon. I still believe that our vision was the right vision – to have a site where we could not only enroll folks into commercial plans but also do SHOP for the small business and continue to have control over the key elements necessary for market transformation. This gets back to the email exchange we had in late March about not losing sight of our larger transformation agenda.

So our vision is the right one – we just bit off too much at one time and had bad project management and bad technology. But the vision is the right vision. So the move to the federal site for commercial enrollment should be viewed as a detour not surrender. We still need to be focused on achieving our vision next year – especially SHOP.

I do not want to be naïve going into the general election but I also do not want us to make short-term political decisions at the expense of our policy agenda. The policy agenda is the only reason I am doing this again so I am willing to burn some political capital on this one. And I don't want the culture in Cover Oregon to let go of our vision either. I would also argue that talking about a pathway to SHOP would be good politics because of the need (and popularity) of small business in Oregon.

In a deposition, McCaig testified about Kitzhaber's statement that he did not want to be naïve going into the general election. She stated:

> Q. Was -- did Kitzhaber have conversations with you about connecting the election to the IT decision? Why is he concerned that you may be naive going into the general election?
>
> A. He didn't want to be naive going into the general election. But I also do not want us to make short-term political decisions at the expense of our policy agenda. The policy agenda is the only reason I'm doing this again. And I'm willing to burn some political capital on this. And I don't want the culture in Cover Oregon to let go of our vision either. I would argue that talking about a pathway to shop would be good politics because of the need and popularity of small business.
>
> My recollection of what this is about is that the media around the decision, that there was a portion of the media that was moving a message when we decided to go to the Federal exchange, that Cover Oregon was done, that it was, in fact, there were headlines that said Cover Oregon was abandoned. I think it was that kind of thing. And this is what I think this was relating to. And there were different elements within Cover Oregon, shop was one of them. I don't know what shop stands for, but I remember it was part of the discussion out there.
>
> And I think the Governor took it to heart and was committed to keeping the hope he had alive about what Cover Oregon could do. And he did express in other ways more than once that he didn't want the decision to go to the Federal exchange to be perceived that he was giving up on Cover Oregon. And –
>
> Q. Did he have conversations about moving to the Federal exchange potentially being a short-term political decision?

> A. No. I don't think that's the part he's referring to is that going to the Cover -- the Federal exchange as a short-term political decision, that we're completely giving up on Cover Oregon. It goes back to this, this piece about whether there was a way to keep some unique imprint that was Oregon was really important to him. And he didn't want to sacrifice that because all of the political darkness out there about Cover Oregon.[465]

McCaig's testimony shows the Governor was concerned about having to sacrifice some of the unique features of Cover Oregon that were really important to him "because all of the political darkness out there about Cover Oregon."[466]

The next day, Kolmer, Bonetto, and McCaig participated in a call about Cover Oregon and exchanged emails.[467] Kolmer and McCaig were worried about potential "creep" and that there was a lack of clarity regarding the future of Cover Oregon.[468] In an email, Kolmer wrote: "You all should know George could be supporting the creep with Governor. So if he asks George for advice, George will want to keep door open. George has heard our collective message about this but even at board expressed his view that we should keep door open."[469] George Brown was a member of the Cover Oregon Board of Directors. The meeting minutes from the April 25, 2014 Cover Oregon Board Meeting state "Dr. Brown asked if using the federal technology prevents the state from adopting a state based exchange in the future and that Pettit responded not at all."[470]

On April 29, 2014, Liz Baxter, the Chair of the Cover Oregon Board, participated in an interview with Oregon Public Broadcasting (OPB). When it was announced that Baxter was going to do the interview, McCaig wrote: "Obp just announced Liz Baxter on think out loud. I thought we put a stake in that on Friday and Clyde was going to call her?"[471]

Bonetto responded: "Yes . . . that's where we left it."[472] Kolmer responded: "The only one who can effectively tell her to stop talking to media is gov. No one to date has been able to put a stop to this. We all have had the conversation at various times."[473] McCaig asked "Did Clyde try?"[474]

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[465] McCaig, Tr. at 170.
[466] *Id*.
[467] *Id*. at 174; Email from Sean Kolmer to Patricia McCaig, copying Mike Bonetto (April 30, 2014) (McCaig Oct. 15, 2015 Production 918-20). Email from John Kitzhaber to Mike Bonetto, copying Patricia McCaig (April 27, 2014) (McCaig Oct. 15, 2015 Production 884).
[468] Email from Sean Kolmer to Patricia McCaig, copying Mike Bonetto (April 30, 2014) (McCaig Oct. 15, 2015 Production 918-20).
[469] *Id*.
[470] Oregon Health Insurance Exchange Corporation Board of Directors Meeting, Minutes, at 2 (April 25, 2014).
[471] Email from Sean Kolmer to Patricia McCaig, copying Mike Bonetto (April 30, 2014) (McCaig Oct. 15, 2015 Production 918-20).
[472] *Id*.
[473] *Id*.
[474] *Id*.

In a deposition, McCaig testified as to why they did not want the chair of the Cover Oregon Board of Directors talking to the media. She stated:

> Q. And then on April 29th, you also emailed the group saying "OBP just announced that Liz Baxter on think out loud. I thought we put a stake in that in Friday and Clyde was going to call her."
>
> A. I was part of a call on Friday with everyone about the -- so it was Clyde Hamstreet was on the call. Mike Bonetto was on the call. I think Sean was. And this was all related to the communications after the Cover Oregon board had made their decision on the Federal exchange. And it was, you know, I can't think of many things there was more media around than there was this going to the Federal exchange. New York Times was there; Wall Street Journal was there; NBC was there. It was incredible. And as part of that, I didn't suggest this, but as part of it, there was a collective agreement out of the group that Clyde was going to be the only spokesperson about the board's decision. Clyde and his team had decided that, that they didn't want Cover Oregon board members going off randomly talking to the media, that they were trying to manage that activity. And I heard on the radio that she was going to be appearing on a radio station. And that's what resulted in the, I thought this was done, I thought this wasn't going to happen.[475]

FINDING: After the Board voted to move to HealthCare.gov, one member of the Board of Directors expressed concern that the Board acted as a public pass through for decisions that had already been made at the state level or by the Governor's advisors.

Documents show that in early May 2014, Bonetto expressed concern that the Board of Directors was not in a "good spot."[476] Bonetto attempted to resolve these issues by coordinating with Kitzhaber's other political operatives. In a May 12 email to Kolmer, Bonetto wrote:

> We should connect tomorrow a.m. if possible . . . had a long conversation with Liz tonight about the board . . . and safe to say that they're not in a good spot. Gretchen submitted her resignation again . . . and sounds like there are others lined up to do the same. Last week's board mtg didn't help . . . as well as how the Tina announcement got rolled out. Fixable . . . but will need to think through this.[477]

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[475] McCaig, Tr. at 176-77.
[476] Email from Mike Bonetto to Sean Kolmer (May 12, 2014) (MBG2050254).
[477] *Id*.

Gretchen Peterson resigned from the Cover Oregon Board of Directors in May 2014. She wrote an email to the Chair of the Board. She wrote:[478]

From: Gretchen Peterson <[redacted]>
Sent: 5/15/2014 6:22:47 AM +0000
To: Liz Baxter [redacted]
Subject: Fwd: COVER OREGON: Deloitte Contract

Hi Liz,

I wanted to make sure you knew that I contacted Kelly as it seemed inappropriate for me to continue to receive Board emails after having resigned. The contract sent today wasn't really confidential but I was concerned that additional emails might be sent with information that I'm no longer entitled to receive, particularly if any movement occurred on the ED search.

I know she mentioned this to Clyde Hamstreet as he emailed me this evening so this info might reach others on the staff tomorrow so would be good to inform other board members as soon as possible.

Clyde voiced concern that my decision was driven by the issue with the Deloitte contract not being submitted to the board. I will respond and clarify my primary reason being workload/time commitment at work - however, it's certainly exacerbated by my belief that the board has very limited influence or impact.

There is a real disconnect between the public's perception and expectations of the board's authority and oversight capability and the reality. The Deloitte contract execution without board review and the seemingly lack of thought to having board discussion and input into the business plan before submission to the legislature are just clearer signals of an ongoing lack of clarity of the board's purpose. I can't fathom a business (for profit or non-profit) operating with their board in this manner.

My perception is this has always been an issue, however, it's certainly become more & more apparent since January. At this point, at best, it's become just an advisory board--worst case, the board simply is acting as a public pass through of decisions already made at the state agency level or by the governor's advisors. While I don't disagree with any of the decisions recently made, I do have concerns that these processes are exactly what contributed to the failure of the technology build. I do disagree with how the board is not being utilized or even consulted. That's not what I signed up for and if my time is stretched thin, it only makes sense for me to focus where I can make a difference.

If you can let me know when my resignation has been communicated to other board members, I would like to email them a quick goodbye and thank you.

I recognize you are in an exceedingly difficult position and I admire and appreciate the professionalism you've brought to the role of Board Chair. Thank you for sharing your wisdom - I've learned a lot from you in the past two years.

Peterson believed the Board may be "simply acting as a public pass through of decision already made at the state agency level or by the governor's advisors." Documents show this was in fact the case, and continued to be the case even after the decision was made to switch to HealthCare.gov. Tina Edlund was selected to lead the transition to the federal exchange and Kitzhaber's political operatives worked with her to fill this role before the Board even voted to switch to HealthCare.gov. Documents show Kolmer emailed Bonetto on April 20 about Tina Edlund's transition out of the Oregon Health Authority.[479] Kolmer wrote:

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[478] Email from Gretchen Peterson to Liz Baxter (May 15, 2014) (Oracle Production, Exhibits to February 22, 2016 Letter from Oracle to the Committee, Exhibit 16).
[479] Email from Sean Kolmer to Mike Bonetto (April 20, 2014) (MBG2037976); *See also* Email from Tina Edlund to Mike Bonetto, copying Sean Kolmer (April 7, 2014) (MBG2027881).

> Talked with Tina yesterday. She had in [sic] interesting proposal that we should think about. In talking to Sarah Miller, Tina and her agreed there needs to be one person overseeing all the work for this transition that can drive the implementation with the authority of the Gov. office. . . . Here is what I would propose: (1) Tina move to Governor's Office . . . starting May 1. Her only responsibility is driving OHA, CoverOregon to make the transition after the decision is made. Her relationships with CMS will be critical here. This will be about operations and implementation. I would still be involved but more focused on the political aspects . . . .[480]

After the Board voted to switch to the federal technology, it was announced that Kitzhaber had "hand-selected" Edlund to head Cover Oregon's transition to the federal exchange.[481] Edlund then worked with Kitzhaber's office during the transition:

- On May 18, 2014, Edlund sent Bonetto sample status reports for the transition project.[482] Bonetto forwarded the email to McCaig, and others, asking them to review so they could discuss them on their call with Edlund later that day.[483] Bonetto sent McCaig his initial thoughts for their call, which stated:

  > (1) Updated on contracts (Alex = CO, Suzanne = OHA); (2) Update on gap analysis and transition from Oracle (Alex); (3) Update on leg conversations (SK); (4) Timeline for presentations next week (Clyde and Tina); (5) Review reporting template (Tina and Sarah); and (6) Small workgroup to frame timeline and future decision points (MB and Clyde).[484]

- On June 6, 2014, Kolmer sent an email to Bonetto and McCaig discussing the agenda for the upcoming Cover Oregon Board of Directors meeting.[485] He advised that the search committee for a new Executive Director at Cover Oregon was going to recommend Aaron Patnode from Kaiser to the Board of Directors.[486] Kolmer told McCaig that Patnode was "on board for where we want to go."[487]

- The agenda for the Board of Directors meeting also included a discussion of future recommendations for Cover Oregon. Kolmer said that they were going to have Clyde Hamstreet walk through his principles for 2015, and present a potential work plan "for the Board to adopt that gets the 'shutdown' coveroregon draft report to legislators for the

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[480] Email from Sean Kolmer to Mike Bonetto (April 20, 2014) (MBG2037976).
[481] Chelsea Kopta, *Gov. hand-picks Oregon Health Authority official to lead Cover Oregon transition*, KATU.COM (May 7, 2014).
[482] Email from Mike Bonetto to Patricia McCaig, Patty Wentz, Dmitri Palmateer, Nkenge Harmon Johnson, copying Sean Kolmer (May 19, 2014) (MBG2003048-68).
[483] *Id*.
[484] Email from Mike Bonetto to Patricia McCaig (May 19, 2014) (MBG2001331).
[485] Email from Sean Kolmer to Mike Bonetto, Patricia McCaig (June 6, 2014) (MBG2007000).
[486] *Id*.
[487] *Id*.

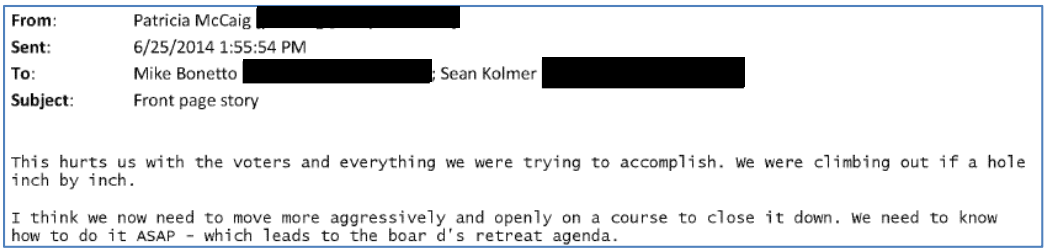
September leg days."[488] Kolmer wrote that he had been working on ensuring certain items were not discussed at the Board meeting. He stated: "I have clyde not wanting to talk with Board about legal actions at the Board meeting but getting small groups of the Board to get briefed by legal. Don't know if this will hold but we need to keep this conversation away from the Board meeting."[489]

- On August 13, 2014, Edlund emailed Kolmer, Wentz, McCaig, and Bonetto. She stated that she was changing her title "officially to Disappointment Manager." She also wrote: "CMS just called to let me know that they are reviewing the actual law and may not be able to get back to me today. They are still trying for today, but I take the fact that they reached out to manage my disappointment as a sign."[490]

- On August 28, 2014, Edlund emailed Wentz, McCaig, Kolmer, Palmateer, and Bonetto. She asked: "Can we get on the phone to debrief about CMS visit and transition project? I can get on the phone after the CO Board Meeting."[491]

Kitzhaber's political operatives were also involved in editing and revising presentations from Cover Oregon to the Oregon legislature. The Oregon legislature's Joint Committee on Legislative Audit and Information Technology (JCLAIMT) scheduled a hearing on May 6, 2014 to "examine Cover Oregon's decision to stop trying to fix its own website and instead connect to the federal technology."[492] Pettit, Edlund, and Hamstreet presented information about the decision at the hearing. Patricia McCaig edited the draft presentation for Edlund, Pettit, and Hamstreet and provided an outline for the flow of the presentation.[493]

Kitzhaber's political operatives wanted Cover Oregon to be completely dissolved. In June 2014, McCaig told Bonetto and Kolmer that they needed to "move more aggressively and openly on a course to close it down."[494]



From: Patricia McCaig [redacted]
Sent: 6/25/2014 1:55:54 PM
To: Mike Bonetto [redacted]; Sean Kolmer [redacted]
Subject: Front page story

This hurts us with the voters and everything we were trying to accomplish. We were climbing out if a hole inch by inch.

I think we now need to move more aggressively and openly on a course to close it down. We need to know how to do it ASAP - which leads to the boar d's retreat agenda.

[488] *Id*.
[489] *Id*.
[490] Email from Tina Edlund to Sean Kolmer, Patty Wentz, Patricia McCaig, Mike Bonetto (August 13, 2014) (MBG2008324).
[491] Email from Patty Wentz to Tina Edlund, copying Patricia McCaig, Sean Kolmer, Dmitri Palmateer, Michael Bonetto (August 28, 2014) (MBG2007065).
[492] Email from Sean Kolmer to Dmitri Palmateer (April 29, 2014) (GOV_HR00076737-40).
[493] Email from Patricia McCaig to Patty Wentz, Mike Bonetto, Sean Kolmer, Dmitri Palmateer, copying Tim Raphael (May 5, 2014) (MBG2000198-242).
[494] Email from Patricia McCaig to Mike Bonetto, Sean Kolmer (June 25, 2014) (MBG2005809).

McCaig's email shows that she viewed Cover Oregon as a campaign issue; and believed that she and the Governor's other political operatives could control the Cover Oregon Board of Directors meeting agenda to get the outcome they wanted.

The Committee obtained documents that show the Governor's political operatives did in fact influence the agenda for the Cover Oregon Board of Directors July 2014 retreat. On July 17, 2014, Kolmer emailed Edlund, McCaig, Raphael, Bonetto, Palmateer, and Harmon Johnson to schedule a call to discuss the upcoming Board of Directors meeting.[495] Kolmer suggested they discuss the agenda for the Cover Oregon Board of Directors meeting, among other things.[496] Later that day, Kolmer sent the draft agenda for a section of the Board meeting.[497]

From: Sean Kolmer [redacted]
Sent: 7/17/2014 9:52:04 PM
To: Patricia McCaig [redacted]; Tim Raphael [redacted]; Palmateer Nkenge [redacted] Tina Edlund [redacted]; Mike Bonetto [redacted]
Subject: materials
Attachments: Draft Board Agenda 7-21-14 3-5 pm V3.docx

Attached is latest draft for Monday section of Board and below is a draft for Tuesday. My comments are in red after talking to Aaron this afternoon. I am getting materials today sometime.

* * *

Main messages for Monday

1. Aaron is here and accountable, reinforce message about Hamstreet transitions
2. Working through backlog and on stable footing with current workload
3. Moving forward, making progress on being successful for transition

Main messages for Tuesday

1. Principle and criteria for the work moving forward.
2. How the Board will govern itself in 2014 (expectation setting for new ED)

Main worries

1. I still have not seen materials and sounds like Clyde has been heavily involved in most of them. When I get them I will send. Main area of concern the "economic framework" that my gut tells me is clyde making his business pitch to save this thing.
2. Aaron gets Clyde needs to take a back seat but has a big chunk of time at end of day 2 with clyde on it. Don't trust his comments will be focused and helpful and will muddle messages.

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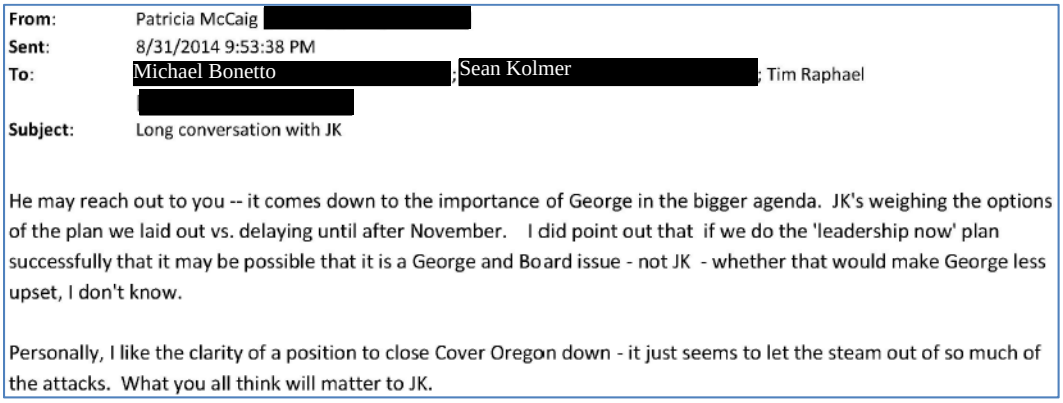
[495] Email from Sean Kolmer to Tina Edlund, Patricia McCaig, Tim Raphael, Mike Bonetto, Dmitri Palmateer, Nkenge Harmon Johnson (July 17, 2014) (MBG2005796); Email from Sean Kolmer to Tina Edlund, copying Dmitri Palmateer, Tim Raphael, Mike Bonetto, Patricia McCaig, Nkenge Harmon Johnson (July 18, 2014) (MBG2006806-7).
[496] *Id*.
[497] Email from Sean Kolmer to Patricia McCaig, Tim Raphael, Dmitri Palmateer, Nkenge Harmon Johnson, Tina Edlund, Mike Bonetto (July 17, 2014) (MBG2008315-19); Email from Sean Kolmer to Amy Fauver, Aaron Patnode, Tina Edlund (July 18, 2014) (GOV_HR00032631-33).

The email shows Kolmer was worried that Hamstreet would "muddle messages" and make "his business pitch to save this thing." After the Board meeting, they continued to work to dissolve Cover Oregon.[498] On August 31, 2014, McCaig sent Bonetto, Kolmer and Raphael an email about her conversation with Kitzhaber about the future of the exchange. The email shows McCaig wanted to shut down Cover Oregon.[499]



From: Patricia McCaig [redacted]
Sent: 8/31/2014 9:53:38 PM
To: Michael Bonetto [redacted]; Sean Kolmer [redacted]; Tim Raphael [redacted]
Subject: Long conversation with JK

He may reach out to you -- it comes down to the importance of George in the bigger agenda. JK's weighing the options of the plan we laid out vs. delaying until after November. I did point out that if we do the 'leadership now' plan successfully that it may be possible that it is a George and Board issue - not JK - whether that would make George less upset, I don't know.

Personally, I like the clarity of a position to close Cover Oregon down - it just seems to let the steam out of so much of the attacks. What you all think will matter to JK.

VIII. Changing the narrative and "pivoting" the conversation about Cover Oregon

FINDING: Kitzhaber's re-election campaign was concerned about the media coverage surrounding Cover Oregon and wanted to change the narrative in the media. Kitzhaber's political advisers made decisions about Cover Oregon with the Governor's reelection campaign in mind.

A. Kitzhaber's political operatives polled public opinion about how to respond to Cover Oregon

The Governor's former communications director, Nkenge Harmon Johnson, tried to draw attention to the lack of transparency at the Governor's office and the tendency to blur the lines between public, private and campaign business in a November 2014 op-ed. She wrote:

> During my tenure, I was adamant that the Governor's office and his closest advisers not blur the lines between state interest and other matters. My concern was seen as disloyalty. I was viewed as an outsider who did not understand the way that they did business. I was told that as long as things were good it did not matter whether things were right.

[498] *See* Email from Patricia McCaig to John Kitzhaber, copying Jan Murdock (Aug. 30, 2014) (CONGJK001869-85); Email from Patricia McCaig to Sean Kolmer and Mike Bonetto (August 31, 2015) (MBG2002444-47); Email from Patricia McCaig to Sean Kolmer, Mike Bonetto (Aug. 31, 2014) (MBG2002725-28).
[499] Email from Patricia McCaig to Mike Bonetto, Sean Kolmer, Tim Raphael (Aug. 31, 2014) (MBG2000744).

> I know that Oregonians deserve transparency: The lines between public, private and campaign business are clear. Emails related to state business must be sent on official state accounts. Campaign polling should not determine office activities. The law and rules of ethics are not to be overlooked.
>
> * * *
>
> The current situation is not how governance should be.[500]

Documents show Harmon Johnson's concerns were valid. Kitzhaber's political operatives worked in April with an opinion research firm to draft a poll to test Cover Oregon's affect on the Governor's popularity.[501] After a call in mid-April discussing the development of the "Oregon Gubernatorial Election Survey," an Area 51 member,[502] Stephen Bella, sent McCaig a memorandum "to pass along some thoughts regarding the upcoming poll."[503] The memorandum was sent to McCaig on April 16, 2014. In the memorandum, Bella wrote that Kitzhaber might be criticized as being out of touch and asleep at the switch.[504] With respect to the Cover Oregon response, he wrote:

> I think the best pivot off Cover Oregon politically is to admit mistakes were made and we are moving to the Federal exchange. The Governor's message then shifts to more important goal which is Oregon continue the bipartisan efforts that have improved quality health care for Oregonians while reducing costs. Then we shift to making the argument that Oregon can't afford to have Washington partisan politics enter this state and destroy all the progress we have made.
>
> I think our best chance politically to stop the bleeding is to drop the dream of Cover Oregon, and shift the argument to a choice between Oregon bipartisan progress versus Washington Republican partisanship.
>
> I think to make that argument the following message sequence needs to take place:
>
> 1. Admit mistakes were made
> 2. Going to federal exchange system but continue Oregon bipartisan health care reforms, i.e. CCO delivery system.

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[500] Nkenge Harmon Johnson, I was viewed as disloyal for criticizing Kitzhaber administration behavior: Guest opinion, THE OREGONIAN (Nov. 3, 2014).
[501] Email from Dave Metz to Kevin Looper, Patricia McCaig, Tim Raphael, copying Curtis Below (April 17, 2014) (TR000885).
[502] Email from Cylvia Hayes to Mark Wiener, Kevin Looper, copying Patricia McCaig (March 30, 2014) (COGR_SHCBAR_KL_0826-27); Hillary Borrud, *Kitzhaber outsourced $3.1 million in policy work to contractors*, EAST OREGONIAN (March 9, 2015).
[503] Email from Steve Bella to Michael Bonetto (April 17, 2014) (MBG2026693-96).
[504] *Id*.

3. Governor not going to allow Washington partisan politics try to destroy Oregon's bipartisan effort at increasing quality and reducing costs.

Not exactly sure best way to test this within the poll but I wanted to raise this since I think shifting attention away from Cover Oregon requires several steps.[505]

At this point, neither the Cover Oregon Board of Directors nor the Technology Options Workgroup had decided to switch to HealthCare.gov, and in fact, the day Bella sent this memorandum, a member of the Technology Options Workgroup expressed concern the group had not met since late March and had not been kept informed about the developments with their recommendation. Bella's memorandum shows, however, that campaign consultants already knew that the state was going to adopt the federal technology. The campaign consultants were not only aware of the switch to HealthCare.gov, but were also discussing how to poll the public's reaction.

After the Cover Oregon Board of Directors voted to switch to HealthCare.gov, polling the public's reaction became more important. Three days after the vote, McCaig emailed Raphael and Wiener and asked if they had "[t]ime to talk about poll instrument? Especially healthcare/cover Oregon?"[506] Wiener suggested also talking about the primary as well.[507] That evening, Wiener sent Dave Metz an email with instructions on how to update the poll.[508] Metz was a public opinion researcher used by the Governor during his re-election campaign.[509]

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[505] *Id*.
[506] Email from Mark Wiener to Patricia McCaig, copying Tim Raphael (April 28, 2014) (McCaig Oct. 15, 2015 Production 888).
[507] Email from Mark Wiener to Tim Raphael, Patricia McCaig (April 28, 2014) (McCaig Oct. 15, 2015 Production 889).
[508] Email from Mark Wiener to Dave Metz, Patricia McCaig, Tim Raphael, Kevin Looper, Scott Nelson, Curtis Below (April 28, 2014) (COGR_SHCBAR_KL_1138-39).
[509] David Metz, Fairbank, Maslin, Maullin, Metz & Associates (last accessed May 16, 2016), http://www fm3research.com/ourteam/David_Metz.

From: Mark Wiener [redacted]
Subject: RE: Draft JK Survey
Date: April 28, 2014 at 9:52:15 PM PDT
To: Dave Metz [redacted], Patricia McCaig [redacted], Tim Raphael [redacted], Kevin Looper [redacted], Scott Nelson [redacted], Curt Below [redacted]

Dave:
The biggest thing we want to add is a Smith and Jones question that tests whether people are willing to see any good in Cover Oregon or whether they chalk it up to unmitigated disaster. It is something we will want to track in the future to measure progress (god willing). The negative is pretty straightforward: $248 million pissed down the rathole with nary a person signed up through the now abandoned website as we lose our pride, prerogatives and independence to the federal exchange. (Sounds great when I say it that way, doesn't it?)

On the other side, there are two approaches to split. One is that yes, the website was a total loss, but the $248 million was spent on more than that. 300,000 people are signed up, many of whom could not have gotten health insurance any other way. The reforms that accompanied Cover Oregon have also reduced the cost and improved the quality of health care, resulting in over $____ in savings that will go to fund schools and other important services. While the website was an embarrassment, some good came of Cover Oregon.

The other approach is more of the accountability/kicked some asses frame: Once the disaster was apparent, the hybrid system was set up, and investigation was conducted, nearly everyone within eyesight was fired, we are going to sue Oracle's asses off and even though we have switched to the federal exchange we are retaining some critical features of the Oregon system.

We could split these entirely, or we could add the kicking asses frame to the we got something out of it frame to see if saying both has a synergy to it. I will likely defer to your advice on the structure.

* * *

The campaign consultants were polling whether Oregonians would react better to hearing about the successes of Cover Oregon or the "accountability/kicked some asses frame." As discussed in more detail later in this report, the Governor's campaign consultants coordinated and drafted a letter to Oregon Attorney General Ellen Rosenblum on May 29, 2014, in which they requested she take legal action against Oracle. On April 30, 2014, McCaig sent the draft survey referenced in Stephen Bella's memorandum to Palmateer and Bonetto.[510]

[510] Email from Patricia McCaig to Mike Bonetto, Dmitri Palmateer (April 30, 2014) (MBG2004910-29).

From: Patricia McCaig [redacted]
Sent: 4/30/2014 10:18:12 PM
To: Mike Bonetto [redacted]; Dmitri P [redacted]
Subject: Survey
Attachments: Oregon State Election Survey - Draft 2a.doc; HTML Attachment.html

Hi, first, remember this is a confidential document. We don't even want to talk about it outside of ourselves. It is about 90% done - primarily review for big gaps, language clarity and any mis statements of facts. If you can turn around your edits to me tonight or early, early tomorrow a.m., that would be great.

The purpose of the poll is threefold:
1) Track changes from October 2013 Kitzhaber baseline (marked by T)
2) Explore additional policy goals/accomplishment language to help guide the next couple of months
3) Understand perceptions of Cover Oregon, who voters hold accountable, and reaction to proposed actions.

The survey included several questions about Cover Oregon, including questions intended to gauge who the public blamed for Cover Oregon's failures and their reaction to proposed actions. McCaig sent the survey to Kitzhaber on May 1, 2014, and wrote: "Governor, this is almost a go. Hope to get in the field tonight, we are doing final tweaks this a.m. Your team has reviewed."[511]

B. Kitzhaber's political operatives wanted to "pivot" the conversation about Cover Oregon

In addition to polling the public's perception of Cover Oregon, Kitzhaber's staff and campaign consultants continuously looked for opportunities to "pivot" the conversation to change the dialogue about Cover Oregon and generate positive messaging for Kitzhaber. They controlled the narrative about Cover Oregon, focusing on shifting blame away from Kitzhaber. McCaig testified as to whether the Governor believed it was important to try and change the media coverage of Cover Oregon. She stated:

> Q. Okay. Thank you. Each of -- a lot of the things you said today is you were really focused on the communications as an unpaid adviser for the Governor.
>
> A. Yes.
>
> Q. So I was just wondering in that role, what was your communication strategy for Cover Oregon when you became involved in the project?
>
> A. To identify what decisions needed to be made in order for it to move forward with a successful Web site and enrollment in 2014.
>
> Q. Did you think it was important to try and pivot or change the dialogue in the media for Cover Oregon?

[511] Email from Patricia McCaig to John Kitzhaber (May 1, 2014) (CONGJK001479-96).

A. Yes, I did.

Q. Did you have a proposal how you thought that would be best possible to achieve?

A. By being clear about what the decisions were, and by showing forward-leaning actions that moved us away from the swirl of it not working, and constructively show a direction by which it could work and begin to enroll people.[512]

1. Kitzhaber's political operatives wanted the Governor to attack Oracle in February 2014

As early as January 2014, Kitzhaber and his political operatives were discussing whether it was time to "pivot" the conversation and start shifting the blame to Oracle. For example, on January 18, 2014, Harmon Johnson sent an article about Cover Oregon with the comment "[n]ot as bad as it could have been."[513] Raphael responded, "Oracle skated in the article . . . may be time to push harder on their role."[514] Kitzhaber said: "Agreed. I think that is the pivot if we don't meet the current 2/3/14 target."[515]

After Cover Oregon and Oracle signed a "transition agreement" on February 28, 2014, Kitzhaber's political operatives tried to use the opportunity to have Kitzhaber attack Oracle.[516] Kitzhaber, however, admitted that they might need to use Oracle in the future as a systems integrator[517] and therefore did not want to use strong language attacking Oracle yet.[518] The discussions regarding Kitzhaber's press release and the transition agreement between Cover Oregon and Oracle show that even though Kitzhaber's political operatives knew very little about the functionality of the website, they focused on strengthening the language criticizing and blaming Oracle for the website's failures.[519]

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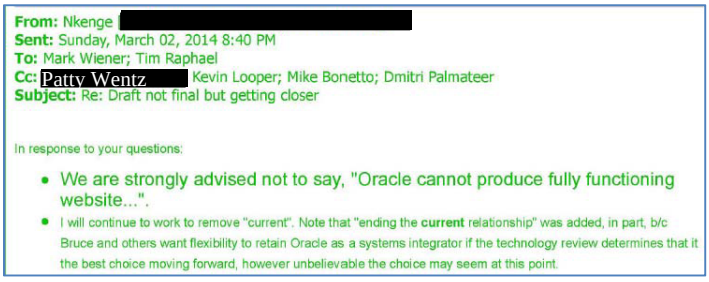
[512] McCaig, Tr. at 185-186. The Committee deposed former Governor Kitzhaber's Chief of Staff (Michael Bonetto), Health Policy Adviser (Sean Kolmer), and one of Kitzhaber's top political operatives (Patricia McCaig), among others. All of these individuals denied that politics played a role in decisions relating to Cover Oregon, despite email evidence at the time showing otherwise. *See* Kolmer, Tr. at 162-164 & 178; Bonetto, Tr. at 108 & 137 & 230-31; McCaig, Tr. at 43 & 169-170. Full copies of these transcripts are available on the Committee's website.
[513] Email from Cylvia Hayes to John Kitzhaber (Jan. 21, 2014) (CONGJK001024-26).
[514] *Id*.
[515] *Id*.
[516] Email from Mark Wiener to Tim Raphael, copying Kevin Looper (March 1, 2014) (TR001448-49).
[517] Email from John Kitzhaber to Liani Reeves, copying Nkenge Harmon Johnson, Mike Bonetto, Tim Raphael, Kevin Looper, Mark Wiener, Bruce Goldberg (March 2, 2014) (COGR_SCHBAR_KL_0317-19).
[518] Email from John Kitzhaber to Mike Bonetto (March 2, 2014) (MBG2006633-34).
[519] Email from Tim Raphael to Kevin Looper, Mark Wiener, Mike Bonetto, Dmitri Palmateer, Patty Wentz, Nkenge Harmon Johnson (March 1, 2014) (COGR_SHCBAR_KL_0300-02).

Kitzhaber and his political team's push to "go after" Oracle occurred despite concurrent conversations about Oracle completing the website, and amidst speculation that Oracle would need to be the system integrator in the future.[520]



From: Nkenge [redacted]
Sent: Sunday, March 02, 2014 8:40 PM
To: Mark Wiener; Tim Raphael
Cc: Patty Wentz [redacted] Kevin Looper; Mike Bonetto; Dmitri Palmateer
Subject: Re: Draft not final but getting closer

In response to your questions:

- We are strongly advised not to say, "Oracle cannot produce fully functioning website...".
- I will continue to work to remove "current". Note that "ending the **current** relationship" was added, in part, b/c Bruce and others want flexibility to retain Oracle as a systems integrator if the technology review determines that it the best choice moving forward, however unbelievable the choice may seem at this point.

* * *

As previously discussed, Oregon originally chose to serve as its own systems integrator[521] and, according to many independent evaluators, the failed launch of Cover Oregon was caused in part by that decision.[522] A February 2016 report on HealthCare.gov, issued by the HHS Office of Inspector General, stated that a systems integrator is important to serve as an advisor in coordinating technical tasks and resources. The report stated: "The job of the systems integrator is to coordinate operations, ensuring that those responsible for various aspects of the project communicate their activities, schedules, and needs to each other."[523]

The Governor's campaign advisers, especially Wiener, were opposed to having the Governor issue a statement that Oracle and Cover Oregon had agreed to end the "current relationship."[524] Wiener was concerned that the wording made it seem Cover Oregon planned on reengaging Oracle. Kitzhaber said that is exactly what the language meant: the "language is intended to mean that we are ending our current relationship with Oracle – which does not mean we could not use them as a subcontractor under a system integrator in the future. It also does not spell out when open enrollment ends."[525] Wiener emailed the entire group his concerns about using the word current.[526]

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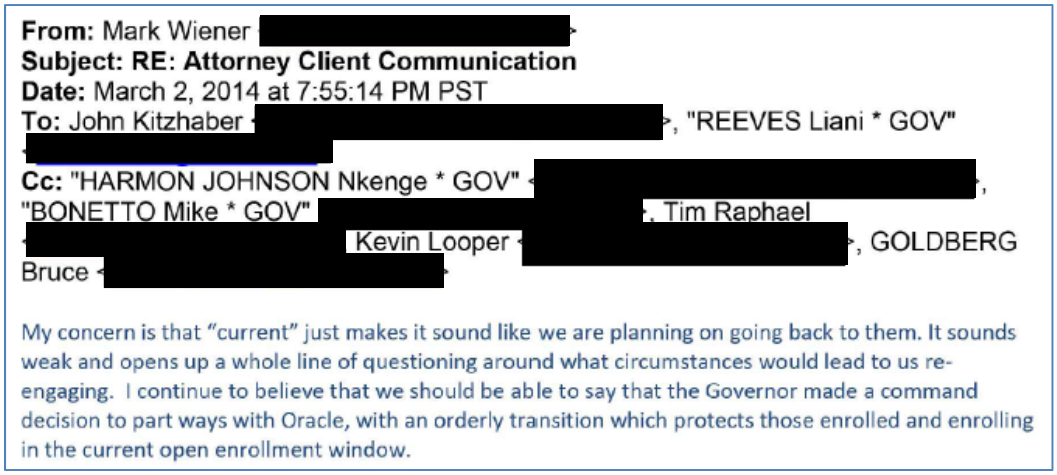
[520] Email from Kevin Looper to Mark Wiener, copying Tim Raphael (March 3, 2014) (TR000764-67).
[521] Email from Carolyn Lawson to Tracey Humphreys (Aug. 18, 2012) (Oracle_HOGR_00002751-54).
[522] *See*, *e.g.*, CMS, Technical Assistance Report For: Oregon Health Insurance Marketplace, at 3 (Feb. 27, 2014) (COVEROR 000041-65).
[523] U.S. Department of Health and Human Services, Office of Inspector General, HealthCare.gov CMS Management of the Federal Marketplace, A Case Study, at 36-37 (Feb. 2016).
[524] Email from Mark Wiener to Nkenge Harmon Johnson, Tim Raphael, Patty Wentz, copying Kevin Looper, Mike Bonetto, Dmitri Palmateer (March 2, 2014) (COGR_SHCBAR_KL_0356-60).
[525] Email from John Kitzhaber to Liani Reeves, copying Nkenge Harmon Johnson, Mike Bonetto, Tim Raphael, Kevin Looper, Mark Wiener, Bruce Goldberg (March 2, 2014) (COGR_SCHBAR_KL_0317-19).
[526] Email from Mark Wiener to John Kitzhaber, Liani Reeves, copying Nkenge Harmon Johnson, Mike Bonetto, Tim Raphael, Kevin Looper, Bruce Goldberg (March 2, 2014) (COGR_SHCBAR_KL_0340-41).



From: Mark Wiener [redacted]
Subject: RE: Attorney Client Communication
Date: March 2, 2014 at 7:55:14 PM PST
To: John Kitzhaber [redacted], "REEVES Liani * GOV" [redacted]
Cc: "HARMON JOHNSON Nkenge * GOV" [redacted], "BONETTO Mike * GOV" [redacted], Tim Raphael [redacted], Kevin Looper [redacted], GOLDBERG Bruce [redacted]

My concern is that "current" just makes it sound like we are planning on going back to them. It sounds weak and opens up a whole line of questioning around what circumstances would lead to us re-engaging. I continue to believe that we should be able to say that the Governor made a command decision to part ways with Oracle, with an orderly transition which protects those enrolled and enrolling in the current open enrollment window.

The Governor's campaign advisers were not supposed to have a role in whether Cover Oregon used Oracle in the future as a systems integrator. This was a decision for Cover Oregon, an independent public corporation in Oregon. Harmon Johnson sent out an updated draft that retained the "current" language, reminding them that Kitzhaber used the term because "Cover Oregon may want/need to hire Oracle in the future, as a systems integrator, for example. (I don't love it either.)."[527] Wiener responded:

> I cannot imagine a world in which – after all we have been through and their shit-tastic performance – we would want to hire anything else. More important, I don't think we can allow the public to think that, as they would rightly term us the chumps of the century. We are continuing to use them to help unwind the current relationship, but indicating we might go back to them outside of that context is (insert descriptive phrase of your choice here).[528]

Wiener did not like the settlement agreement, especially the provision that allowed either party to terminate early, which required the sides to "speak with care and nuance." Wiener wrote: "We must be the worst negotiators in the history of negotiation."[529] Raphael circulated new language to Wiener and Looper and Wiener responded: "Good. Don't let them weaken it."[530]

2. Kitzhaber's political operatives discussed how to "pivot" the conversation when the First Data Report was released in March 2014

Kitzhaber's political operatives strategized how to use the release of the First Data Report on March 20, 2014 as an opportunity to "pivot" the conversation and shift blame away from the

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[527] Email from Mark Wiener to Nkenge Harmon Johnson, Tim Raphael, Patty Wentz, copying Kevin Looper, Mike Bonetto, Dmitri Palmateer (March 2, 2014) (COGR_SHCBAR_KL_0356-60).
[528] *Id*.
[529] Email from Mark Wiener to Tim Raphael, copying Kevin Looper, Mike Bonetto (March 2, 2014) (TR000649).
[530] Email from Mark Wiener to Tim Raphael, copying Kevin Looper (March 2, 2014) (COGR_SHCBAR_KL_0383).

Governor. They focused on attacking Oracle and having the Governor call for the resignation of Cover Oregon officials.

- On February 10, 2014, in preparation for the upcoming release of the First Data Report, Raphael emailed Wiener, copying McCaig and Looper.[531] He said: "Bruce considering taking Exeter up on its offer to build out website . . . they would agree to work for free til there's a working website . . . Exeter has ex-Oracle employees and is also possible source for anti-Oracle, anti-Lawson stories . . . has always wanted CO work."[532] Wiener responded: "Speaking for myself, I would like to get on the horn tomorrow afternoon."[533]

- On March 6, 2014, Palmateer sent Raphael an email to discuss preparing for the First Data response.[534] Palmateer wrote:

> [O]racle. How do we make it through this without suggesting that we might pursue a lawsuit? This is the period when we will have the best chance to change the narrative. It might be too early but we should push as hard as possible. What about as an action step: I am forwarding the first data report as well as additional internal documentation to the attorney general and outside counsel to review our possible legal options and am asking for a recommendation from them by May 1st as to whether the state should initiate a lawsuit against Oracle.[535]

  The Governor's political operatives planned to use the First Data report to justify pursuing potential legal action against Oracle. Palmateer thought this was the "best chance to change the narrative."[536]

- On March 17, 2014, Cylvia Hayes emailed Kitzhaber with her thoughts about preparing for the upcoming week. She wrote:

> A few thoughts. One, I thought we were going to fire Bruce (I think, unfortunately that has to happen). . . . Three, I think your tone in this press conference is critical. You must deliver your sense of being accountable without looking weak or defensive or angry. People are as distrustful of big business as they are of government and Oracle is big business. You were mislead [sic] by big-monied interests just like so many of us are – just a thought.[537]

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[531] Email from Patricia McCaig to Mark Wiener, copying Tim Raphael, Kevin Looper (Feb. 10, 2014) (COGR_SCHBAR_KL_0151-0153).
[532] *Id*.
[533] *Id*.
[534] Email from Tim Raphael to Dmitri Palmateer (March 6, 2014) (TR000476).
[535] *Id*.
[536] *Id.*
[537] Email from Cylvia Hayes to John Kitzhaber (March 17, 2014) (CONGJK001185-87).

- On March 20, 2014, Raphael emailed Wiener, copying McCaig, Looper, Harmon Johnson, and Bonetto. Raphael wrote: "Oracle blames 'weaknesses within OHA and Cover Oregon' for troubled roll out of Oregon's health care exchange."[538] Wiener responded: "That feels like an opening for us."[539]

The documents show Kitzhaber's political operatives, including Cylvia Hayes, told Kitzhaber to criticize Oracle for political reasons. Kitzhaber's campaign advisors also pushed him to call for the resignations of Cover Oregon officials for public relations purposes. An email from Raphael on March 6, 2014 contained a suggestion that they respond to the First Data report by asking for letters of resignation from all senior management at Cover Oregon and OHA effective May 1.[540] A few days later, Bonetto shared confidential legal information that he received from state attorneys with the Governor's political operatives.[541]

When the First Data report was released on March 20, Kitzhaber issued a press release announcing that he accepted Goldberg's resignation as Director of the Oregon Health Authority and that Goldberg would continue his role as Acting Director of Cover Oregon until a new executive director was hired.[542] The press release also announced that Kitzhaber "spoke with members of the Cover Oregon Board and asked them to change the top technology and operational leadership at Cover Oregon and undertake a full assessment of the current structure and staffing model."[543]

Triz delaRosa was not willing to resign quietly. An email exchange from April 7, 2014 shows Bonetto forwarded McCaig a letter that delaRosa sent to Bruce Goldberg and Liz Baxter.[544] In the letter, delaRosa stated:

> I am aware that last Wednesday the Board was to be meeting and believe that one of the issues to be discussed would have been about my future with Cover Oregon. I know the meeting has been moved to this Thursday, April 10, 2014, and have not heard if my future is still a topic of discussion. This is an unusual process as my employment is controlled by the Executive Director of Cover Oregon, not by the Board.
>
> * * *
>
> Over the past few months I have witnessed the problems associated with Cover Oregon's website handled by the 'resignations' of the individuals in leadership.

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[538] Email from Tim Raphael to Patricia McCaig, Mark Wiener, Kevin Looper, Nkenge Harmon Johnson, Mike Bonetto (March 20, 2014) (MBG2006975).
[539] Email from Tim Raphael to Mark Wiener, copying Patricia McCaig, Kevin Looper, Nkenge Harmon Johnson, Mike Bonetto (March 20, 2014) (TR000438).
[540] Email from Tim Raphael to Dmitri Palmateer (March 6, 2014) (TR000476).
[541] Email from Mike Bonetto to Tim Raphael, Kevin Looper, Mark Wiener (March 9, 2014) (COGR_SHCBAR_KL_0525-27).
[542] Press Release, Governor Kitzhaber releases first data report, announces actions on Cover Oregon (March 20, 2014), *available at* http://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=579.
[543] *Id*.
[544] Email from Mike Bonetto to Patricia McCaig (April 7, 2014) (McCaig October 15, 2015 Production 218-221).

> This provides plausible political cover for the Governor's office, but does not resolve the core issues with Cover Oregon.
>
> * * *
>
> The morning of March 20, 2014 I received a call from Mike Benetto [sic], in his role as the Governor's Chief of Staff, in which he informed me about the Governor's press release by which the Board was asked to remove both Aaron Karjala, CIO and me from our roles at Cover Oregon. This press release has resulted in the expected flurry of negative reports in the press regarding Cover Oregon and me. It most recently culminated in the April 1, 2014 Associated Press article which was nationally disseminated and which leads with a report of Aaron's resignation and reiterates Governor Kitzhaber's instruction to the Board to replace me.
>
> * * *
>
> The Cover Oregon executive team met with Mike Benetto [sic], Sean Kolmar [sic] and others on a monthly basis from June through October 2013 and provided accurate information about the deficiencies in the budget and accurate reports regarding the website development. Despite this knowledge, the Governor's office release [sic] unrealistic public assurances about the viability of the project and the ability of individuals to enroll through the Cover Oregon website. . . ."[545]

The Governor's call for resignations provided "plausible political cover for the Governor's office," and caused the media to focus on the Board instead of the Governor. After Bonetto forwarded the letter to McCaig, she responded: "Hmmm. This letter is probably the best confirmation ever that she needs to go. Can talk/if when helpful."[546] Bonetto responded: "Yes . . . agree. Can talk now . . . or tomorrow morning at 8am."[547]

Triz delaRosa ultimately entered into a $67,000 settlement agreement with Cover Oregon on April 22, 2014,[548] and resigned from her position effective May 16.[549]

Former Oregon Health Authority Chief Information Officer Carolyn Lawson also alleged that she was the "scapegoat" for Cover Oregon's failure.[550] After resigning in December

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[545] *Id*.
[546] Email from Patricia McCaig to Mike Bonetto (April 7, 2014) (McCaig October 15, 2015 Production 222).
[547] Email from Mike Bonetto to Patricia McCaig (April 7, 2014) (McCaig October 15, 2015 Production 223).
[548] Settlement Agreement and Release of Claims entered into by Beatriz DelaRosa and the State of Oregon, by and through Cover Oregon (April 22, 2014), http://media.oregonlive.com/health_impact/other/delaRosa_Settlement.pdf.
[549] Nick Budnick, *Among political casualties of Cover Oregon health exchange fiasco, some fared better than others*, THE OREGONIAN (July 30, 2014).
[550] Jeff Manning, *Cover Oregon: Carolyn Lawson considers suing state, cites "systematic pattern of defaming,"* THE OREGONIAN (Mar. 17, 2014).

2013,[551] Lawson wrote a public letter describing the circumstances surrounding her resignation.[552] In her letter, she described the "substantial cover-up" of the reasons for the failed launch of the website on October 1, 2013. Lawson said there was a cover-up to protect "selected individuals who might be held responsible for the failed launch while unfairly and untruthfully pointing the finger at others."[553] She claimed that the "cover-up included a systematic—and factually false—messaging campaign organized and enforced by officials at OHA and Cover Oregon, and especially and most vocally (to Ms. Lawson) by Ms. Wentz."[554] Lawson claimed that officials prohibited her from "telling the 'real story' publicly."[555]

3. Kitzhaber's political operatives discussed how to pivot the conversation to Oracle

On April 25, 2014, the same day that the Board of Directors voted to switch to the federal exchange, one of Kitzhaber's campaign advisors, Christian Gaston, asked McCaig "when can the conversation shift to Oracle?"[556] McCaig replied: "It will get there. this [sic] started the turn and now we start the climb back out . . . get control again in Oregon message hopefully next week, followed by ways in which money can be utilized at OHA, followed by Oracle."[557] Gaston responded, "Good. I think this is working well."[558]

After the switch, the Governor's political operatives were still concerned about negative media coverage for the Governor:[559]

From: Tim Raphael [redacted]
Sent: Saturday, April 26, 2014 6:28 AM
To: Patricia McCaig; Mark Wiener; Kevin Looper; Dave Metz
Subject: Reg. Guard Editorial

This is the argument I'm worried about:

Cover Oregon is as great a gift as any Republican gubernatorial candidate could wish for — it wraps Obamacare, Oregon's Democratic-dominated state government and a software fiasco into one neat package and lays it at Kitzhaber's feet. Better yet, from an opponent's point of view, it's a dot that can be connected to others. Cover Oregon failed because Kitzhaber put his trust in the wrong people, and then paid too little attention as signs of trouble began to accumulate. The same thing happened with the Columbia River Crossing, the now-abandoned plan to build a new Interstate 5 bridge between Oregon and Washington State. The same thing happened with Rudy Crew, the high-salaried junketeer whom Kitzhaber put in charge of his education reform project.

* * *

Kitzhaber's political operatives were focused on how Kitzhaber's opponents would discuss Cover Oregon during his re-election campaign. Not all of the media coverage was negative, however, and McCaig believed they had an opportunity to "turn this into a win."[560]

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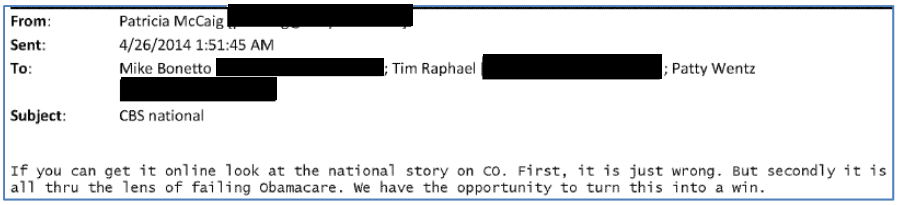
[551] Jeff Manning, *Cover Oregon: Official who oversaw development of health exchange, Carolyn Lawson, resigns*, THE OREGONIAN (Dec. 19, 2013).
[552] Angeli Ungar Law Group LLC, *Carolyn Lawson Tort Claim Notice* (March 17, 2014).
[553] *Id*.
[554] *Id*.
[555] *Id*.
[556] Email from Christian Gaston to Patricia McCaig (April 25, 2014) (McCaig October 15, 2015 Production 859).
[557] *Id*.
[558] *Id*.
[559] Email from Mark Wiener to Tim Raphael, Patricia McCaig, Kevin Looper, Dave Metz (April 26, 2014) (McCaig Oct. 15, 2015 Production 877).
[560] Email from Patricia McCaig to Michael Bonetto, Tim Raphael (April 26, 2014) (MBG2001549).



From: Patricia McCaig [redacted]
Sent: 4/26/2014 1:51:45 AM
To: Mike Bonetto [redacted]; Tim Raphael [redacted]; Patty Wentz [redacted]
Subject: CBS national

If you can get it online look at the national story on CO. First, it is just wrong. But secondly it is all thru the lens of failing Obamacare. We have the opportunity to turn this into a win.

A few days later, on April 29, 2014, McCaig sent Bonetto and Kolmer an email, copying Kitzhaber, with a link to a local story on Oracle, titled "KATU investigation finds Oracle shares blame with Cover Oregon for website disaster."[561] She wrote: "FYI, timing is everything."[562]

4. Kitzhaber's political operatives wanted Oregon to initiate legal action against Oracle

FINDING:	Kitzhaber's campaign consultants orchestrated a letter to Oregon Attorney General Rosenblum asking her to initiate legal action against the primary vendor for the project, Oracle, shortly after Kitzhaber complained that his opponent in the gubernatorial election was benefiting from media coverage that linked the Governor to Cover Oregon's failure.

Approximately one month after the Board voted to switch to HealthCare.gov, on May 29, 2014, Kitzhaber sent a letter to the Attorney General of Oregon, Ellen Rosenblum, asking her to "immediately initiate legal action to recover payments and other damages from Oracle, Cover Oregon's primary website developer."[563] Documents show Kitzhaber's campaign consultants orchestrated sending a letter to the Oregon Attorney General, as well as additional letters to Sen. Ron Wyden and Sen. Jeff Merkley and HHS Inspector General Daniel Levinson about Oracle. They also considered sending a draft letter to the Oregon Investment Council asking the Council to divest from Oracle, but the group decided not to send that letter after learning that "Oregon's investments in Oracle are 'passive and small.'"[564]

The emails show political considerations played a role in the decision to have the Governor send a public letter to Attorney General Rosenblum. On May 19, 2014, Kitzhaber emailed his political team (to Mike Marshall, copying McCaig, Christian Gaston, Scott Nelson, Raphael, Wiener, Looper, and Dave Metz), and expressed frustration with the negative headlines regarding Cover Oregon.[565] He wrote:

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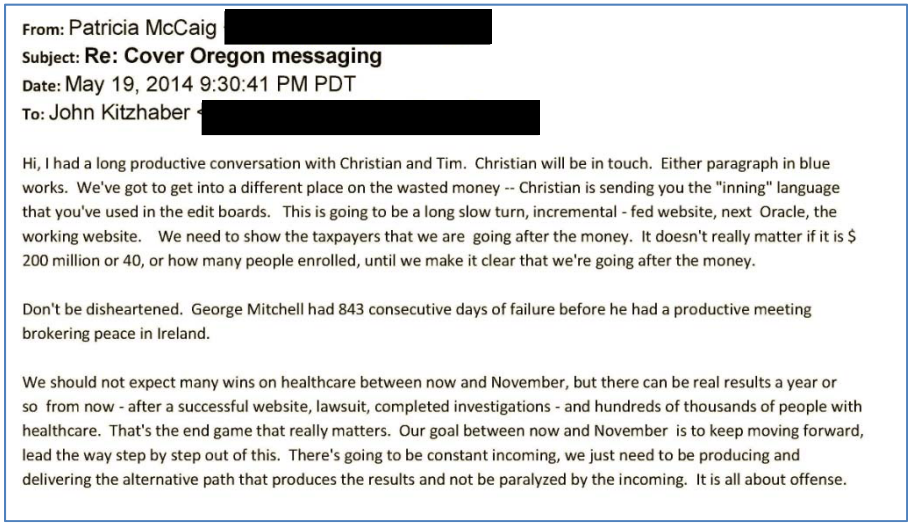
[561] Email from Patricia McCaig to Mike Bonetto, Sean Kolmer, copying John Kitzhaber (April 29, 2014) (MBG2009218).
[562] *Id*.
[563] Letter from Governor John A. Kitzhaber, MD, Governor, Oregon, to the Honorable Ellen Rosenblum, Attorney General, Oregon (May 29, 2014).
[564] Email from Patricia McCaig to Mike Bonetto (May 27, 2014) (MBG2000950); Email from Duke Shepard to Dmitri Palmateer, copying Mike Bonetto, Patricia McCaig, Tim Raphael, Nkenge Harmon Johnson, Sean Kolmer, (May 27, 2014) (MBG2017565).
[565] Email from Patricia McCaig to Mike Bonetto (May 20, 2014) (MBG2002644-46).

> Obviously, this relentless pounding is starting to seriously wear me down so I imagine I am losing some of my objectivity. The fact is, however, Richardson is benefitting from what is essentially a free independent expenditure campaign – the equivalent of a boatload of money he does not have if his campaign was paying to move a message to this extent on television and in print and social media… Just don't know how we turn the corner on this.[566]

McCaig advised that they needed to show the taxpayers they were going after the money and "get into a different place on the wasted money."[567]



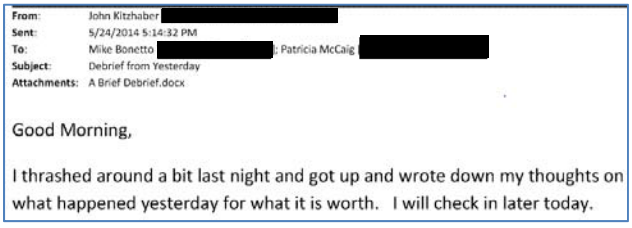
From: Patricia McCaig [redacted]
Subject: **Re: Cover Oregon messaging**
Date: May 19, 2014 9:30:41 PM PDT
To: John Kitzhaber [redacted]

Hi, I had a long productive conversation with Christian and Tim. Christian will be in touch. Either paragraph in blue works. We've got to get into a different place on the wasted money -- Christian is sending you the "inning" language that you've used in the edit boards. This is going to be a long slow turn, incremental - fed website, next Oracle, the working website. We need to show the taxpayers that we are going after the money. It doesn't really matter if it is $ 200 million or 40, or how many people enrolled, until we make it clear that we're going after the money.

Don't be disheartened. George Mitchell had 843 consecutive days of failure before he had a productive meeting brokering peace in Ireland.

We should not expect many wins on healthcare between now and November, but there can be real results a year or so from now - after a successful website, lawsuit, completed investigations - and hundreds of thousands of people with healthcare. That's the end game that really matters. Our goal between now and November is to keep moving forward, lead the way step by step out of this. There's going to be constant incoming, we just need to be producing and delivering the alternative path that produces the results and not be paralyzed by the incoming. It is all about offense.

McCaig provided Kitzhaber with her strategy to change the narrative: (1) federal website; (2) Oracle; and then (3) the working website.[568] Kitzhaber was focused on how Cover Oregon coverage was yielding positive media coverage for his opponent, Richardson. After being attacked by the media on May 23, 2014 about Cover Oregon,[569] Kitzhaber told Bonetto and McCaig that he was still concerned that Richardson was benefiting from the "free independent expenditure campaign that the Cover Oregon issue is giving to" him.[570] Kitzhaber added that McCaig and Bonetto had access to "all the resources of the Governor's office."[571]



From: John Kitzhaber [redacted]
Sent: 5/24/2014 5:14:32 PM
To: Mike Bonetto [redacted]; Patricia McCaig [redacted]
Subject: Debrief from Yesterday
Attachments: A Brief Debrief.docx

Good Morning,

I thrashed around a bit last night and got up and wrote down my thoughts on what happened yesterday for what it is worth. I will check in later today.

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[566] Email from Patricia McCaig to Michael Bonetto (May 20, 2014) (MBG2001527-29).
[567] *Id*.
[568] *Id*.
[569] Chelsea Kopta, *Kitzhaber ignores questions about Cover Oregon*, KATU.COM (May 23, 2014).
[570] Email from John Kitzhaber to Mike Bonetto and Patricia McCaig (May 24, 2014) (MBG2002872-74).
[571] *Id*.

A Brief Debrief

It would be good to have a debriefing of what happened yesterday. Not trying to find fault but trying to understand how this could have gone so wrong and to learn from it and make sure it does not happen again.

Here are my initial thoughts

1. We should have been ready for this. This was my first public press event after the release of the FBI investigation and the Bruce Goldberg resignation issue. We should have anticipated and prepared more intentionally and thought through questions and scenarios just as we did for the March press conference on Frist Data. We should have had our A Team there from communication office.

2. We should expect that Sandini and his ilk (as well as R trackers) are going to show up at every event until November and be prepared.

3. When there is another main speaker (e.g. Sally Jewell, Gina McCarthy) and they finish and ask for questions – and if there are none or when they are done answering – I should ask if there are any questions for me. And if there are and if they are off topic (in yesterday's cast, climate change) I should pause, let our guest leave, and then answer a few questions. Need someone from communications there to say "time for one more question."

4. DPU needs to think this though better as well and give more thought to how to get out. They brought me up an elevator from an underground parking lot as they expected protestors. They perhaps should anticipate and have an elevator holding to go back down to the underground. In this case they did not use the elevator but took me out the front door of the building (have no idea why) and I walked down the street, around the corner and into the underground exposed all the way to the press and Sandini, et al. Not good from a media/tracker exposure standpoint. Also probably not a good move from a security standpoint either.

A few more thoughts

We are totally on the defensive now. Cover Oregon has derailed any forward momentum. I do not want to hide from the press but to engage with them and use each opportunity to go on offense – with the full understanding that we will get Cover Oregon questions ... and should anticipate what they are and how to respond.

What is our plan for the next two months? It is written down? Who is charged with developing and executing it? How are we deploying the communications staff -- and other staff -- in the governors' office ... not to campaign but to use the remarkable forum we have to go on the offensive and pro-actively generate legitimate news about the many fronts and issues on which we are engaged?

Incumbency (and a suite of impressive policy wins and issue that matter to Oregonian) is our most effective tool. Are we really using this to its full potential?

We have all the resources of the governor's office, a big communications staff, the opportunity to engage on almost any issue, to call meetings to which almost anyone we ask will show up; we are directly involved in all sorts of news worthy things from economic development, to public safety, to education, the environment, forestry issues, the Portland Harbor, fire season and drought preparedness, public health, etc. We have a solid campaign budget and which we continue to grow.

And yet we can't seem to compete with the free independent expenditure campaign that the Cover Oregon issue is giving to Dennis Richardson. Here are a few thoughts:

- Should we consider regular press availability?
- Should be having a weekly idea session where we decide on the issues we want to high light that week and how we will generate press – how we will use social media to drive it.
- What about being more aggressive with the radio – individual calls outside Portland – Eugene, Medford, Bend – with prerecorded actualities sent out to all the small more rural stations.
- What about regular edit board phone calls?

On the campaign side:

- Should we do a more recent and updated taping session with Mark Weiner – and open ended interview (that could include Cover Oregon stuff) that we could cut/edit and send out on a more intentional, aggressive and regular basis.
- Should I take some time each week and do something for our Face Book page.
- What about virtual town halls?

McCaig responded. She wrote:

> . . . I'm going out now to get some exercise and clear my head a bit, and then I want to respond to your memo. While I'm exercising I want to review where I think we are and where we are going in light of your memo/questions because my initial reaction is that I think we are in better shape on all three fronts: 1) Cover Oregon, 2) Governor's office positive messaging action plan (aka The Summer Plan), and 3) Campaign. I need to evaluate whether yesterday's incident is symptomatic of a bigger problem within the office/campaign versus a painful oversight. I need to do it in the light of day with some blood getting to my brain – I'll be back in touch later today with some observations and actions based on your questions.[572]

McCaig testified about the memorandum attached to the email that was drafted by Kitzhaber. She stated:

> Q. [Y]ou'll see down here at the bottom where it says, "We are totally on the defensive now. Cover Oregon has derailed any forward momentum."
>
> What do you think the Governor meant by that?
>
> A. That he felt that he had lost the ability to talk about and raise the other issues on his agenda that were really important to him.
>
> Q. And then if you go to the last page, you'll see that there are all these arrow bullet points here. I'd like to ask you about the last paragraph right above those. It begins with, "And yet, we can't seem to compete with the free independent expenditure campaign that the Cover Oregon issue is giving to Dennis Richardson."
>
> And you testified to this earlier, but who is Dennis Richardson?
>
> A. Dennis Richardson was his Republican opponent in the general election.
>
> Q. And what do you believe he meant by "free independent expenditure campaign"?
>
> A. That it was an issue of incredible public intensity, and that it was being coopted and used extensively in some very political ways in electoral politics.

[572] Email from Patricia McCaig to John Kitzhaber, copying Mike Bonetto (May 24, 2014) (MBG2002315).

Q. And just to ask again, you had testified earlier that politics never came into any Cover Oregon decision. So how do you reconcile the Governor's statement here about the free independent expenditure campaign with the idea that it never came into play?

A. Well, he said that we can't compete with a free independent expenditure campaign. And what he's talking about there is his ability to get messages out about other kinds of things that he cared about on his agenda, because there was a constant drum beat by Dennis Richardson and predominantly Republicans at this point to link the Governor to failure on it.

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.

Q. But I asked you about whether the Governor's decisions were politically motivated? Not the Cover Oregon board.

A. No. The Governor's issues -- the Governor's decisions were not driven by politics. Expressing frustration that the issues that he cared so deeply about didn't have and couldn't get the light of day because he was being ambushed and continually assaulted by the less noble elements of politics was pretty frustrating to him.

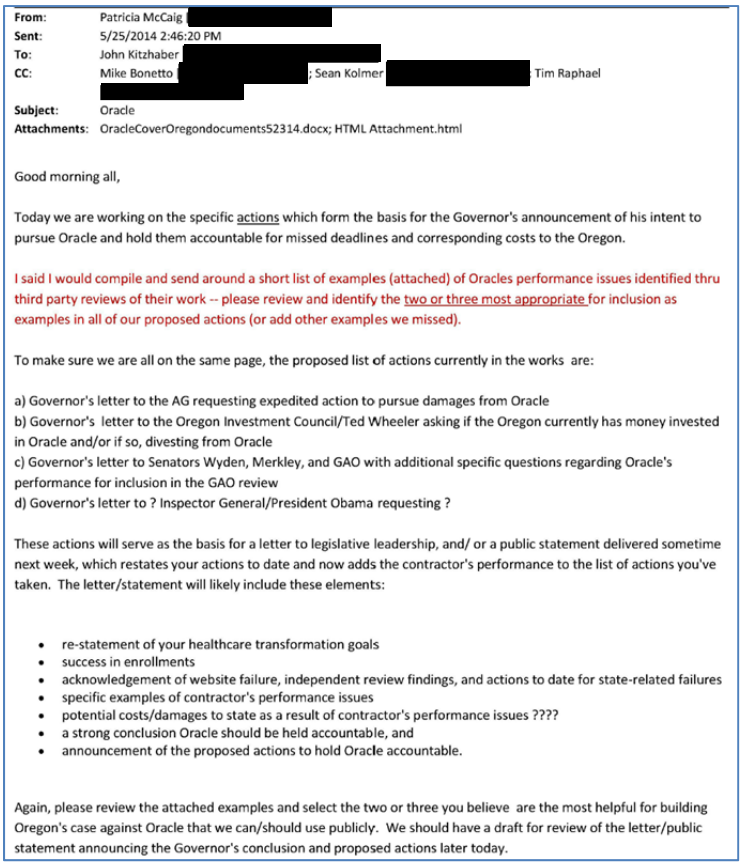
Q. And I'll just note that at the bottom of this email, for the last three bullet points, it says -- it's underlined, "On the campaign side."

A. And this was not unlike what I said before that where there was an opportunity to use the campaign in a way to assist him in his official capacities by putting somebody like Tim Raphael on to do it, that it was totally legitimate to do it.

Because if there were funds available to put the Governor on television, on Cover Oregon, that would be totally appropriate to do with a campaign and that's not something that he could have done with State resources at the time.

So he's raising the question, are we at a place now where we should consider doing other kinds of activities using the campaign funds as a vessel for moving a broader message about Cover Oregon.

The next day—on May 25, 2014—Patricia McCaig emailed Kitzhaber and said they were working on "specific actions which form the basis for Kitzhaber's announcement of his intent to pursue Oracle and hold them accountable for missed deadlines and corresponding costs to the Oregon [sic]."[573]



From: Patricia McCaig [redacted]
Sent: 5/25/2014 2:46:20 PM
To: John Kitzhaber [redacted]
CC: Mike Bonetto [redacted]; Sean Kolmer [redacted]; Tim Raphael [redacted]
Subject: Oracle
Attachments: OracleCoverOregondocuments52314.docx; HTML Attachment.html

Good morning all,

Today we are working on the specific actions which form the basis for the Governor's announcement of his intent to pursue Oracle and hold them accountable for missed deadlines and corresponding costs to the Oregon.

I said I would compile and send around a short list of examples (attached) of Oracles performance issues identified thru third party reviews of their work -- please review and identify the two or three most appropriate for inclusion as examples in all of our proposed actions (or add other examples we missed).

To make sure we are all on the same page, the proposed list of actions currently in the works are:

a) Governor's letter to the AG requesting expedited action to pursue damages from Oracle
b) Governor's letter to the Oregon Investment Council/Ted Wheeler asking if the Oregon currently has money invested in Oracle and/or if so, divesting from Oracle
c) Governor's letter to Senators Wyden, Merkley, and GAO with additional specific questions regarding Oracle's performance for inclusion in the GAO review
d) Governor's letter to ? Inspector General/President Obama requesting ?

These actions will serve as the basis for a letter to legislative leadership, and/ or a public statement delivered sometime next week, which restates your actions to date and now adds the contractor's performance to the list of actions you've taken. The letter/statement will likely include these elements:

- re-statement of your healthcare transformation goals
- success in enrollments
- acknowledgement of website failure, independent review findings, and actions to date for state-related failures
- specific examples of contractor's performance issues
- potential costs/damages to state as a result of contractor's performance issues ????
- a strong conclusion Oracle should be held accountable, and
- announcement of the proposed actions to hold Oracle accountable.

Again, please review the attached examples and select the two or three you believe are the most helpful for building Oregon's case against Oracle that we can/should use publicly. We should have a draft for review of the letter/public statement announcing the Governor's conclusion and proposed actions later today.

These emails create the appearance that there was a connection between Kitzhaber's and McCaig's concerns about the "free independent expenditure campaign that the Cover Oregon issue" was giving to Dennis Richardson and the letter sent by Kitzhaber to Attorney General Rosenblum asking her to initiate legal action against Oracle.

The Area 51 team was scheduled to meet with the new campaign manager, Mike Marshall, on May 27, 2014.[574] Bonetto told Marshall that he would not participate in the meeting because he was "working through some issues with PMc."[575] McCaig also told the Area 51 team she would not be at their meeting. She wrote: "All, sorry to miss the get together today – unfortunately I'm on deadlines for the 'cause' and will need to miss A51. Be nice to Mike,

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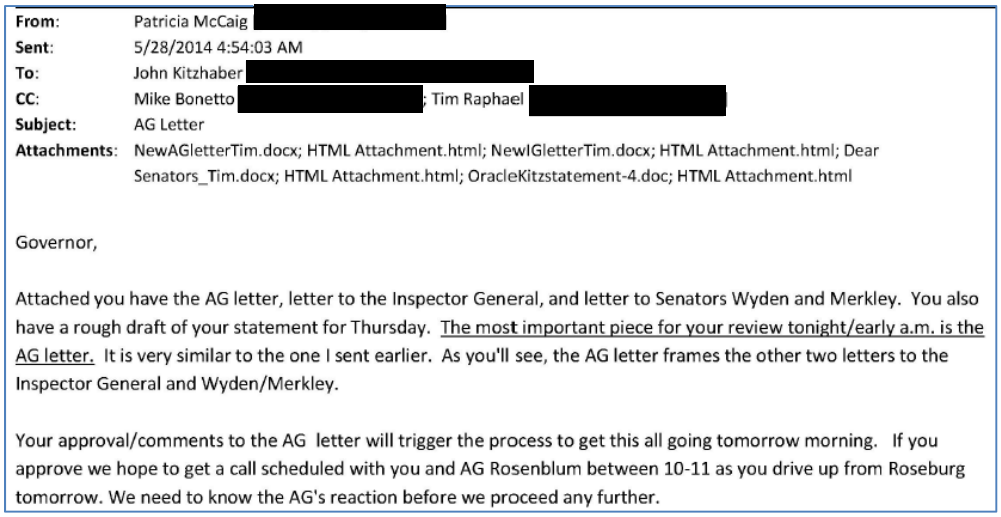
[573] Email from Patricia McCaig to John Kitzhaber, copying Mike Bonetto, Sean Kolmer, Tim Raphael (May 25, 2014) (MBG2000397-402).
[574] Email from Mike Marshall to Patricia McCaig, copying Cylvia Hayes, John Kitzhaber, Bill Wyatt, Curtis Robinhold, Tom Imeson, Steve Marks, Stephen Bella, Scott Nelson, Dan Carol, Tim Raphael, Mike Bonetto, Mark Wiener, Jan Murdock (May 27, 2014) (MBG2004818).
[575] Email from Mike Bonetto to Mike Marshall (May 27, 2014) (MBG2005434).

we're so glad to have him. PMc."[576] McCaig was probably working on the letter to Attorney General Rosenblum—later that night she sent a draft of the letters to Kitzhaber. In her email to Kitzhaber, McCaig stated that the priority was for him to review the letter to Attorney General Rosenblum so they could get the process going.[577]



From: Patricia McCaig [redacted]
Sent: 5/28/2014 4:54:03 AM
To: John Kitzhaber [redacted]
CC: Mike Bonetto [redacted]; Tim Raphael [redacted]
Subject: AG Letter
Attachments: NewAGletterTim.docx; HTML Attachment.html; NewIGletterTim.docx; HTML Attachment.html; Dear Senators_Tim.docx; HTML Attachment.html; OracleKitzstatement-4.doc; HTML Attachment.html

Governor,

Attached you have the AG letter, letter to the Inspector General, and letter to Senators Wyden and Merkley. You also have a rough draft of your statement for Thursday. The most important piece for your review tonight/early a.m. is the AG letter. It is very similar to the one I sent earlier. As you'll see, the AG letter frames the other two letters to the Inspector General and Wyden/Merkley.

Your approval/comments to the AG letter will trigger the process to get this all going tomorrow morning. If you approve we hope to get a call scheduled with you and AG Rosenblum between 10-11 as you drive up from Roseburg tomorrow. We need to know the AG's reaction before we proceed any further.

On May 28, 2014, Kitzhaber sent McCaig and Bonetto, copying Raphael, his edits to the letter to Oregon Attorney General Rosenblum, Inspector General Levinson, and Senators Wyden and Merkley.[578] He wrote: "This all looks good. I will work on my statement in the car this morning. Obviously need to run the trap line with AG, CMS, and our Senators. Also still need clarity on the issue of remaining contracts with Oracle."[579]

Later that day, Bonetto emailed updated draft letters to a group that included McCaig, Raphael, Duke Shepard, Palmateer, Harmon Johnson, and Kolmer—a mix of state officials and campaign officials. He said that he "[w]ould like to get everyone on the phone at 6pm tonight to discuss details/process for tomorrow."[580]

The next morning, Kitzhaber told Bonetto, McCaig, and Raphael that he "[w]ould like to talk briefly as soon as you folks are up."[581] They set up a call for 8:00 a.m.[582] Documents show

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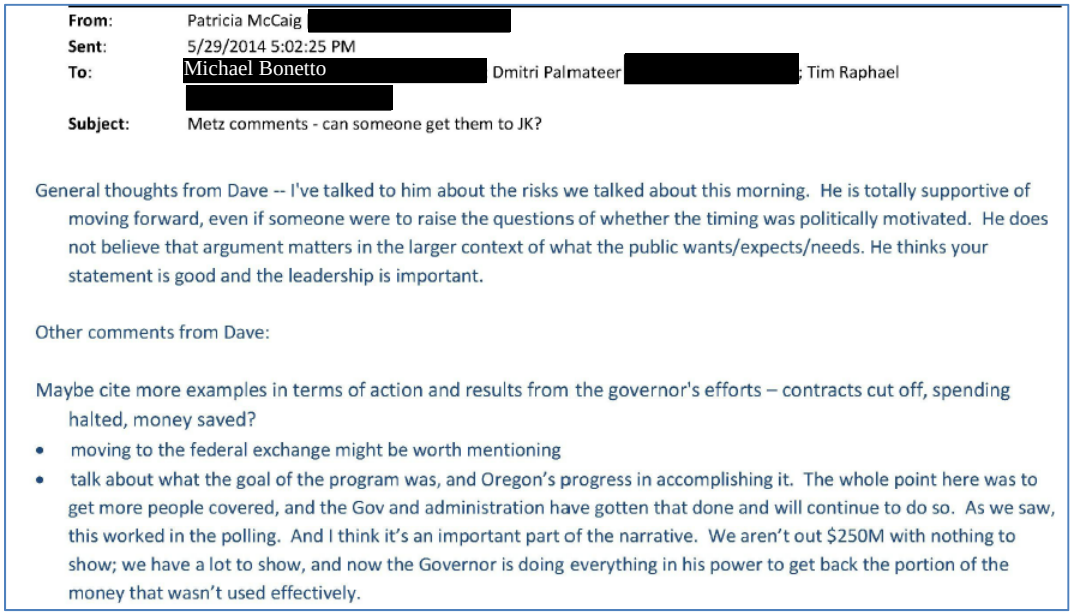
[576] Email from Patricia McCaig to Mike Marshall, copying Cylvia Hayes, John Kitzhaber, Bill Wyatt, Curtis Robinhold, Tom Imeson, Steve Marks, Scott Nelson, Dan Carol, Tim Raphael, Mike Bonetto, Mark Wiener, and Jan Murdock (May 27, 2014) (MBG2004238-39).
[577] Email from Patricia McCaig to John Kitzhaber, copying Mike Bonetto and Tim Raphael (May 28, 2014) (MBG2002385-96). As previously noted, there appears to be incorrect time stamps on some of the materials produced by Michael Bonetto and it therefore is likely this email was sent on May 27, 2014 according to the meta data for the email.
[578] Email from Tim Raphael to John Kitzhaber, copying Patricia McCaig and Mike Bonetto (May 28, 2014) (MBG2012946-47).
[579] *Id*.
[580] Email from Patricia McCaig to Mike Bonetto, copying Tim Raphael, Duke Shepard, Dmitri Palmateer, Nkenge Johnson, Sean Kolmer (May 29, 2014) (MBG2002846).
[581] Email from Mike Bonetto to Tim Raphael, copying John Kitzhaber and Patricia McCaig (May 29, 2014) (MBG2002384).

that after the call, McCaig had a conversation with Dave Metz, a public opinion researcher used by the Governor during his re-election campaign. She sent an email to Bonetto, Palmateer, and Raphael later that morning updating them on her discussion with Metz. McCaig wrote that Metz was "totally supportive of moving forward, even if someone were to raise the questions of whether the timing was politically motivated."[583]



From: Patricia McCaig [redacted]
Sent: 5/29/2014 5:02:25 PM
To: Michael Bonetto [redacted] Dmitri Palmateer [redacted]; Tim Raphael [redacted]
Subject: Metz comments - can someone get them to JK?

General thoughts from Dave -- I've talked to him about the risks we talked about this morning. He is totally supportive of moving forward, even if someone were to raise the questions of whether the timing was politically motivated. He does not believe that argument matters in the larger context of what the public wants/expects/needs. He thinks your statement is good and the leadership is important.

Other comments from Dave:

Maybe cite more examples in terms of action and results from the governor's efforts – contracts cut off, spending halted, money saved?

- moving to the federal exchange might be worth mentioning
- talk about what the goal of the program was, and Oregon's progress in accomplishing it. The whole point here was to get more people covered, and the Gov and administration have gotten that done and will continue to do so. As we saw, this worked in the polling. And I think it's an important part of the narrative. We aren't out $250M with nothing to show; we have a lot to show, and now the Governor is doing everything in his power to get back the portion of the money that wasn't used effectively.

After the letters were released to the public, Kitzhaber's political operatives celebrated the changing headlines and the positive coverage in the media:

- McCaig emailed Bonetto, Palmateer, Duke Shephard, Harmon Johnson, Raphael, and Kolmer. She wrote: "What a day. Headlines good. Politico great."[584]

- McCaig emailed Bonetto, Raphael, Harmon Johnson, Palmateer, Duke Shepard, Christian Gaston, and Scott Nelson with the subject "Channel 8" and a comment: "Lead story – Great."[585] Later, McCaig sent the group a new email with the subject: "NEW POLL at end of Channel 8 story." She wrote: "Kitzhaber has large lead 15 points in Channel 8 survey."[586]

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[582] Email from John Kitzhaber to Mike Bonetto, Tim Raphael, Patricia McCaig (May 29, 2014) (MBG2039216-19).
[583] Email from Patricia McCaig to Mike Bonetto, Dmitri Palmateer, Tim Raphael (May 29, 2014) (MBG2005560); Email from Patricia McCaig to John Kitzhaber (May 9, 2014) (CONGJK001548-74).
[584] Email from Patricia McCaig to Mike Bonetto, Dmitri Palmateer, Duke Shephard, Nkenge Johnson, Tim Raphael, Sean Kolmer (May 29, 2014) (MBG2002616).
[585] Email from Patricia McCaig to Mike Bonetto, Tim Raphael, Nkenge Harmon Johnson, Dmitri Palmateer, Duke Shepard, Christian Gaston, Scott Nelson (May 29, 2014) (MBG2000451).
[586] Email from Patricia McCaig to Mike Bonetto, Tim Raphael, Nkenge Harmon Johnson, Dmitri Palmateer, Duke Shepard, Christian Gaston, Scott Nelson (May 30, 2014) (MBG2004425).

- McCaig sent Kitzhaber: "Headlines coming in are all good! Politico is great. We've got another first. . . . First in the country to sue Oracle!"[587]

- Palmateer emailed McCaig, Duke Shepard, and Bonetto with the subject "oracle yahoo stock page."[588] In the body of the email, Palmateer wrote: "Look at picture and the stories under their stock headlines. That is our goal . . . national stories that drag on their stock price. Probably coincident that their price dropped a bit in after hours trading but worth a dream anyway."[589]

- McCaig emailed the Area 51 team, including Cylvia Hayes, Kitzhaber, Bonetto, Stephen Bella, Scott Nelson, Dan Carol, Raphael, and others, updating them on the letters. She brought attention to the fact that they had successfully changed the narrative in the press and the positive coverage of the Governor.[590] Cylvia Hayes responded: "It was indeed a good day. A move back to being on offense. Great work."[591] McCaig also circulated some of the headlines about Kitzhaber's letters.[592]

- A few days later, Palmateer circulated an article discussing whether the Cover Oregon fiasco could be a public relations nightmare for Oracle.[593] McCaig responded: "Indeed! We are on to something and need to keep this story line going."[594]

- An August 25, 2014 email from Bonetto shows McCaig requested a call to discuss "Oracle lawsuit follow-up – critical dates for possible actions between now and election."[595]

After sending the letter to the Attorney General of Oregon about initiating legal action against Oracle, Kitzhaber's political operatives were concerned that she might not file suit against the company. In an email to McCaig and Bonetto on July 10, 2014, Duke Shepard stated he had "no confidence in the AG."[596]

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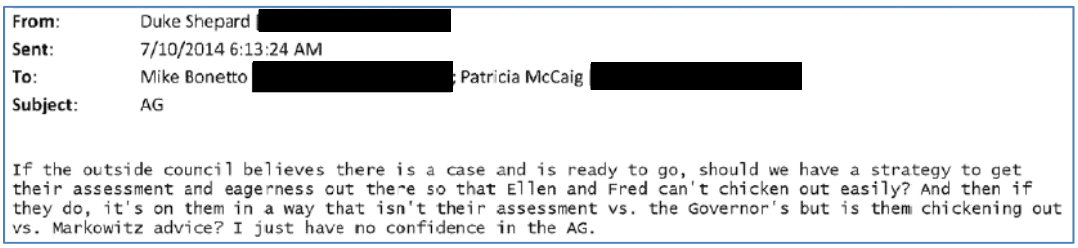
[587] Email from Patricia McCaig to John Kitzhaber (May 29, 2014) (McCaig Production PMc 00104-106).
[588] Email Patricia McCaig to Dmitri Palmateer, copying Duke Shepard and Mike Bonetto (May 30, 2014) (MBG2007676).
[589] McCaig responded: "We must develop a strategy on all of this. It is too good. Who is the swat team?? I'm willing to do/get the work done." *Id*. The Committee asked McCaig about this email exchange during her deposition, and McCaig said that her words were intended to be humorous. McCaig, Tr. at 220.
[590] Email from Cylvia Hayes to Patricia McCaig, John Kitzhaber, Bill Wyatt, Curtis Robinhold, Tom Imeson, Steve Marks, Stephen Bella, Scott Nelson, Dan Carol, Tim Raphael, Mike Bonetto, copying Mark Winer, Mike Marshall (May 29, 2014) (MBG2005487-88).
[591] *Id*.; *See also* Email from Dan Carol to Patricia McCaig, copying Cylvia Hayes, John Kitzhaber, Bill Wyatt, Tom Imeson, Curtis Robinhold, Stephen Bella, Steve Marks, Tim Raphael, Scott Nelson, Mike Bonetto, Mark Wiener, Mike Marshall (May 30, 2014) (MBG2005425-26).
[592] Email from Mark Wiener to Patricia McCaig, Cylvia Hayes, John Kitzhaber, Bill Wyatt, Tom Imeson, Curtis Robinhold, Stephen Bella, Steve Marks, Tim Raphael, Scott Nelson, Dan Carol, Mike Bonetto, copying Mike Marshall (May 30, 2014) (MBG2004704-06).
[593] Email from Dmitri Palmateer to Patricia McCaig, Tim Raphael, Mike Bonetto, Duke Shepard (June 4, 2014) (MBG2007671).
[594] Email from Patricia McCaig to Dmitri Palmateer, copying Tim Raphael, Mike Bonetto, Duke Shepard (June 4, 2014) (MBG2007352).
[595] Email from Mike Bonetto to Sean Kolmer (August 25, 2014) (MBG2049394).
[596] Email from Duke Shepard to Mike Bonetto and Patricia McCaig (July 10, 2014) (MBG2009374).



From: Duke Shepard [redacted]
Sent: 7/10/2014 6:13:24 AM
To: Mike Bonetto [redacted]; Patricia McCaig [redacted]
Subject: AG

If the outside council believes there is a case and is ready to go, should we have a strategy to get their assessment and eagerness out there so that Ellen and Fred can't chicken out easily? And then if they do, it's on them in a way that isn't their assessment vs. the Governor's but is them chickening out vs. Markowitz advice? I just have no confidence in the AG.

Shepard was concerned that Rosenblum and Deputy Attorney General Frederick Boss would "chicken out."[597] Shepard wanted to find a way to force to sue Oracle. Bonetto testified in a deposition that he was not aware that Shepard or anyone else took any actions to that effect.[598]

C. Kitzhaber's political operatives influenced messaging for Cover Oregon

1. Kitzhaber's political operatives influenced Cover Oregon's communication with third parties

Documents show Kitzhaber's political operatives controlled how state-paid officials responded to media inquiries and publicly discussed the development and operation of the exchange. On March 14, 2014, two state employees, Wentz and Harmon Johnson, agreed "to contact Tim [Raphael] promptly upon receiving reporter inquiries on anything other than routine Cover Oregon/IT related questions."[599] Other documents shows Kitzhaber's staff and campaign consultants continuously coordinated to ensure that the state and the campaign messaged consistently:

- On April 12, 2014, McCaig emailed Hamstreet to tell him that they were creating a list of questions about moving to the federal exchange.[600] Hamstreet said that they were working on their own list and that they should talk. McCaig wrote: "Yes, I want to talk to you before you hit the media circuit, I'd like to go over a few Q and As."[601] On April 15, 2014, McCaig sent Bonetto the "short" list of possible questions on moving to the federal exchange. She said their goal was to get a comprehensive list, and to prioritize which questions must be answered in advance of the technology recommendation, which was due the next week.[602]

- The morning of April 15, 2014, McCaig emailed Raphael and Bonetto and asked if they could review talking points for Clyde Hamstreet and Brian Gard, the president of Gard Communications, for Hamstreet's upcoming interviews and discussions with

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[597] *Id*.
[598] Bonetto, Tr. at 132-133.
[599] Nigel Jaquiss, *Blurred Lines: How Kitzhaber's re-election campaign secretly shaped state policy around Cover Oregon*, WILLAMETTE WEEK (Nov. 11, 2014).
[600] Email from Clyde Hamstreet to Patricia McCaig (April 13, 2014) (McCaig October 15, 2015 Production 338).
[601] *Id*.
[602] Email from Patricia McCaig to Mike Bonetto, Tim Raphael (April 15, 2014) (MBG2000758).

> legislators.[603] McCaig sent the talking points to Clyde Hamstreet.[604] She told Hamstreet that they would "appreciate it if you had a staff person in the room to take notes on the questions and record any follow-up materials if needed."[605] Later that day, Hamstreet told McCaig and Gard that he did not have staff in his meetings because he "felt it was important I appear independent . . . . I don't think I embarrassed anyone but we will see."[606] McCaig said: "Good, glad it is over. Yes, I get the independent bit for the first interview. Were there specific questions about the Governors' invr. olvement [sic]- if so, from which media and what were they asking? That would be helpful."[607]

Documents show that as the election neared, the Governor's campaign staff was concerned about any advertising or other marketing for Cover Oregon.[608] On July 8, Hamstreet emailed McCaig and Bonetto and sent draft questions to he proposed be asked in a survey about Cover Oregon. Patricia McCaig responded, "Clyde, you got my text last Monday? This is a bad idea."[609] McCaig testified:

> He reached out to me and wanted my opinion on it because I think he valued my ability and communications and all sorts of other things. And there was no way I could understand where the money was going to come from for it, who was going to pay for it, why it would be justified in front of the taxpayers right now about Cover Oregon doing a poll. It was the last kind of public scrutiny questioning and doubt about what they were spending their time and energy doing. What it was testing was irrelevant to me. It didn't matter because it was not a good idea.[610]

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[603] Email from Tim Raphael to Patricia McCaig, copying Mike Bonetto (April 15, 2014) (TR000895).
[604] Email from Patricia McCaig to Clyde Hamstreet, Brian Gard (April 15, 2014) (MBG2006115).
[605] *Id*.
[606] Email from Clyde Hamstreet to Patricia McCaig, copying Brian Gard (April 15, 2014) (McCaig October 15, 2015 Production 375-76).
[607] *Id*.
[608] Email from Clyde Hamstreet to Mike Bonetto, Patricia McCaig, Sean Kolmer, Tina Edlund, Amy Fauver (July 8, 2014) (GOV_HR00033804).
[609] Email from Clyde Hamstreet to Patricia McCaig (July 8, 2014) (McCaig Production PMc 00125-126).
[610] McCaig, Tr. at 183-184.

From: Patricia McCaig [redacted]
Sent: Tuesday, July 8, 2014 2:52 PM
To: Clyde Hamstreet
Cc: BONETTO Mike * GOV; KOLMER Sean P * GOV; EDLUND Tina D; Fauver Amy
Subject: Re: CoverOregonAttitudesSurveyDraft revMOC V7

Clyde, you got my text last Monday? This is a bad idea.

PMc

Do you have tiem to meet

On Jul 8, 2014, at 1:48 PM, Clyde Hamstreet <[redacted] wrote:

Mike and Patricia,
Attached is a draft of questions I propose be asked in a survey. The purpose of the survey is to obtain independent objective data on the value or harm of the continued use of the Cover Oregon brand to enroll Oregonians in qualified health plans. While no advertising or other marketing should be planned until after Nov 15 we do need to make a decision shorty as we proceed with the technology transition. I would appreciate any suggestions or edits you might have.

A few days later, Clyde Hamstreet emailed Mike Bonetto about the opinion research poll. He wrote:[611]

From: Clyde Hamstreet [redacted]
Sent: Tuesday, July 15, 2014 3:45 PM
To: BONETTO Mike * GOV
Cc: Aaron Patnode; Patnode, Aaron
Subject: Status Quo on CO webpage & name

Mike,

Aaron Patnode and I had talked about the plans for opinion research regarding Cover Oregon more than a month prior to his start date as executive director.

As part of my first day transition briefing I told Aaron about your and my discussion a week ago last Friday evening regarding the need for opinion research and how it would not be needed if we left the Cover Oregon webpage and name unchanged until after the elections. I told him I thought you and I had agreed that CO would not proceed with the opinion research as we would not have to discuss the Board's need to deal with a web site and name change. Since then we heard at the transition steering committee meeting that it has been determined that there will be a new webpage with a new name that will become Oregon's healthcare portal. There seemed to be some confusion on this point when it was discussed briefly.

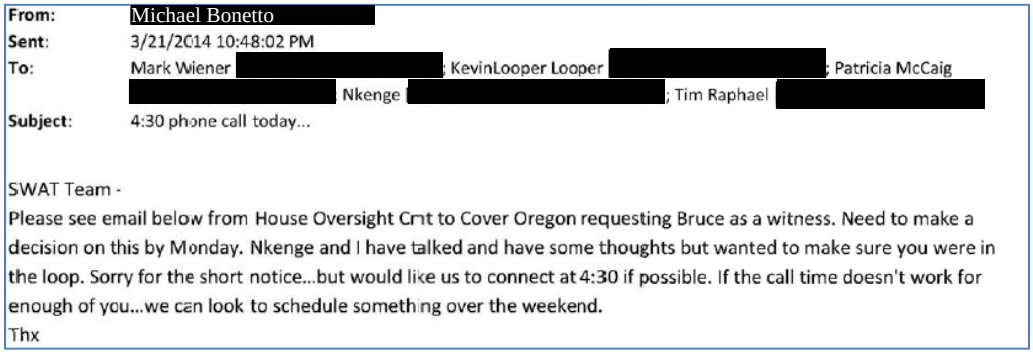
Aaron told me he has concerns about the changes described. He and I think it would be good if the three of us could talk. Can we schedule a 15 minute call with you yet this week.

[611] Email from Sean Kolmer to Tina Edlund (July 16, 2014) (GOV_HR00035562-64).

Mike Bonetto took Clyde Hamstreet off of the email exchange. He wrote:

> I just saw this email from Clyde. Even though you and I haven't officially met . . . I wanted to make sure that . . . 1) I offered my many, many thanks for taking on this herculean task . . . and 2) I would greatly appreciate an opportunity for just the two of us and Sean to connect tomorrow to ensure we're in sync moving forward.[612]

Documents show Kitzhaber's campaign consultants controlled how Cover Oregon responded to federal oversight. In April 2014, the Committee held a hearing titled "Examining ObamaCare's Problem-Filled State Exchanges,"[613] and requested that interim Executive Director Bruce Goldberg appear as a witness.[614] The Committee invited Goldberg to testify in his capacity as Executive Director at Cover Oregon, and the invitation was sent directly to Cover Oregon. Still, Bonetto emailed Wiener, Looper, McCaig, Nkenge Harmon Johnson, and Raphael about the request. He stated: "Need to make a decision on this by Monday."[615]



From: Michael Bonetto [redacted]
Sent: 3/21/2014 10:48:02 PM
To: Mark Wiener [redacted]; KevinLooper Looper [redacted]; Patricia McCaig [redacted], Nkenge [redacted]; Tim Raphael [redacted]
Subject: 4:30 phone call today...

SWAT Team -
Please see email below from House Oversight Cmt to Cover Oregon requesting Bruce as a witness. Need to make a decision on this by Monday. Nkenge and I have talked and have some thoughts but wanted to make sure you were in the loop. Sorry for the short notice...but would like us to connect at 4:30 if possible. If the call time doesn't work for enough of you...we can look to schedule something over the weekend.
Thx

In response to Bonetto's email, Wiener, asked: "Is this an invitation that can be credibly declined? Going before Issa is the functional equivalent of going before McCarthy (and I don't mean Eugene)."[616] Bonetto responded "Mark to your point on excepting [sic] or declining invitation . . . remember that if you decline you can always be subpoenaed."[617]

Gregory Van Pelt, retired CEO of Providence Health and Human Services' Oregon region and an adviser to Kitzhaber, was selected to attend the hearing in Goldberg's place.[618]

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[612] *Id.*
[613] U.S. House of Representatives, Committee on Oversight and Government Reform, *Press Release: Joint Subcommittee Hearing to Examine Problems with Obamacare State Exchanges* (April 1, 2014).
[614] Email from H. Comm. on Oversight & Gov't Reform Majority Staff to Amy Fauver (March 26, 2014) (GOV_HR00079420-23); Email from Nkenge Harmon Johnson to Rachel Wray (April 1, 2014) (GOV_HR00040400-09).
[615] Email from Mike Bonetto to Mark Wiener, Kevin Looper, Patricia McCaig, Nkenge Harmon Johnson, Tim Raphael (March 21, 2014) (MBG2002428).
[616] Email from Mike Bonetto to Mark Wiener, Kevin Looper, Nkenge Harmon Johnson, Patricia McCaig, Tim Raphael (March 21, 2014) (COGRSHCBAR_KL_0811-13).
[617] *Id.*
[618] Initial Testimony of Greg Van Pelt, President, Oregon Health Leadership Council, Advisor to Governor John Kitzhaber, MD, and Acting Executive Director of Cover Oregon, Dr. Bruce Goldberg, for the Subcommittees on

Goldberg was unable to testify because of an injury.[619] McCaig testified about changes she made to Van Pelt's testimony. She stated:

> Q. Okay. So thank you. I appreciate that. Next, I want to a little bit talk about -- are you familiar with the Committee on Oversight and Government Reform holding a hearing in April 2014 titled "Examining Obamacare's Problem-filled State Exchanges"?
>
> A. When?
>
> Q. It was April 2014 –
>
> A. Yeah. It's the one where I edited the testimony, that one, yes.
>
> Q. So Bruce Goldberg was invited to testify for Cover Oregon. And Gregory Van Pelt was chosen to testify instead. Is that correct?
>
> A. I'm sorry, ask me that again.
>
> Q. Did Gregory Van Pelt testify on behalf of Cover Oregon?
>
> A. He did.
>
> Q. Do you know how Gregory Van Pelt was decided to be the one to testify?
>
> A. No. What do I know about that besides my other piece? Bruce Goldberg broke his leg. So Bruce Goldberg broke his leg. I don't know, I don't think it was to avoid the hearing. I think it was, like, the day before or 2 -- it was literally right then. And the first I think I knew about it was an email from Mike Bonetto where he was, again, informing all of us that this was going to be a media event. It was coming up, that the committee had asked, that Bruce was unable to go, and that there needed to be a conversation about who would appear on the State's behalf.
>
> Q. And then you said that you edited the testimony for the hearing?
>
> A. Well, other people claim that, as an extension of my broad power and reach, that I took congressional testimony and altered it. I would describe it slightly differently.

Economic Growth, Job Creation, and Regulatory Affairs; and, Energy Policy, Health Care, and Entitlements of the U.S. House of Representatives Oversight and Government Reform Committee (April 3, 2014).

[619] Bonetto, Tr. at 35.

Q. How would you describe it?

A. That the Governor's office sent to a handful of people, not just me, but others, the proposed testimony for Greg Van Pelt, who I have never met, and on a very short turn-around, maybe 12 hours, or 24-hour notice, and asked if we would review the testimony, other people review the testimony. And I think many people reviewed the testimony. I did it in about a nanosecond, and made proposed edits that were so meaningless, they were, they had to do with where a paragraph was, and moving a paragraph around, and submitted those edits back to the Governor's office, and had no idea whether they were going to be accepted or not.

Q. Do you know why the Governor's office was arranging the appearance of Gregory Van Pelt rather than Cover Oregon?

A. Well, I assume it was in coordination with Bruce Goldberg. And he probably felt that he -- I mean, I would assume Bruce and the Governor would talk to the Governor's office about this, because you're Congress. It's kind of a big deal. It's going to be a media thing. And I think the Governor would be expected to be informed about that. And there was a cooperative working relationship. I mean, it wasn't -- so I'm not surprised by that, that the Governor's office would be involved in that conversation.

Q. And other than your comments about the testimony, did you do anything else to help prepare for the hearing?

A. I know that on -- well, just talking about one of those items you showed me earlier, we had a conversation in one of those meetings about what was the -- these are my words now -- what was going to be the media spillover on all of it? And who was going to respond to what the questions were going to be coming out of the congressional hearing on it? What was the Governor's office and others hoping to achieve out of all of that? I did participate in a conversation about that.[620]

Documents show Raphael, another one of Kitzhaber's campaign consultants, also edited Van Pelt's testimony.[621]

[620] McCaig, Tr. at 188.
[621] Email from Nkenge Harmon Johnson to Tim Raphael, copying Dmitri Palmateer, Mike Bonetto, Patricia McCaig, Mark Wiener, Kevin Looper, Scott Nelson (April 2, 2014) (McCaig Production PMc00022-26).

From: Tim Raphael [redacted]
To: Nkenge [redacted]
Cc: Dmitri Palmateer [redacted]; Mike Bonetto [redacted]; Patricia McCaig [redacted]; Mark Wiener [redacted]; Kevin Looper [redacted]; Scott Nelson [redacted]
Sent: Wednesday, April 2, 2014 11:20 AM
Subject: Re: Draft of testimony for Congressional sub-comte hearing

Nkenge,
Priority changes are attached. Patricia and I have reviewed the testimony and have focused edits in two areas:
1) Greg's introduction - with a goal of establishing his private sector health care credibility and volunteer capacity with the state; and
2) The transition from ACA success to broken website and the Governor's action to make sure it is not a barrier to enrollment.
We have not tried to wordsmith the doc…I think it is important to get the attached changes to Elliot and Greg.
Best,
Tim

* * *

From: Tim Raphael [redacted]
To: Nkenge Harmon Johnson [redacted]
Cc: Mike Bonetto [redacted]; Patricia McCaig [redacted]; Mark Wiener [redacted]; Kevin Looper [redacted]; Scott Nelson [redacted]; Dmitri Palmateer [redacted]
Sent: Monday, March 31, 2014 5:24 PM
Subject: Re: Draft of testimony for Congressional sub-comte hearing

Nkenge,
It is difficult for me to respond without some more context on the committee and the ask from the committee. It seems unlikely we can get away with not describing the Cover Oregon technology problems, reviews and solutions in more detail. I'm also trying to figure out how we should talk about the GAO investigation and whether we can use it to our advantage. I also don't like the idea of describing Greg as a special advisor to the Governor.

IX. CMS failed to properly oversee the Cover Oregon project

FINDING:	CMS failed to adequately oversee the development and implementation of Cover Oregon. CMS officials applauded the progress at Cover Oregon and awarded the project additional federal dollars when, at the same time, the quality assurance vendor for the project rated the project's overall health as "high risk."

There were a number of internal offices and groups within CMS responsible for overseeing states' efforts to establish health insurance exchanges. CCIIO led the implementation of state health insurance exchanges. The documents and testimony obtained by the Committee are consistent with the findings of a report by GAO titled "State Health Insurance Marketplaces: CMS Should Improve Oversight of State Information Technology Projects." GAO found CMS failed to conduct adequate oversight over the $1.45 billion of federal taxpayer dollars invested in information technology (IT) projects supporting health insurance marketplaces.[622]

In the report, GAO noted that although CMS and states established a framework for oversight, CMS oversight was not always effectively executed.[623] The report stated:

> CMS did not clearly document, define, and communicate its oversight roles and responsibilities to state officials, . . . [d]id not consistently involve senior executives in the review and approval of federal funding for states' IT marketplace projects, . . . [and] CMS's reviews of the states' progress were not always effective in ensuring that systems and capabilities being developed to support the states' marketplaces were fully tested before they became operational.[624]

Documents and testimony obtained by the Committee show CMS did not adequately monitor Oregon's use of the over $300 million in federal dollars awarded to the Cover Oregon project. Cover Oregon was the "administrator" of the majority of the federal funds received by Oregon to build the exchange and had a duty to administer those funds. CMS, however, failed to properly monitor the activities at Cover Oregon.

A. CMS considered Cover Oregon to be a model exchange

When awarding grants, CMS considered Oregon to be one of the most successful states in planning and establishing a state-based exchange. In January 2013, CMS visited Cover Oregon and attended a Cover Oregon Board of Directors meeting. After CMS's visit, the Executive Director of Cover Oregon, Rocky King, emailed the Governor's staff and other individuals to let them know that CCIIO told Cover Oregon they were providing the exchange with "more dollars (on a per capita basis) than many other states" because they "believe[d] the

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[622] U.S. Gov't Accountability Office, *State Health Insurance Marketplaces: CMS Should Improve Oversight of State Information Technology Project*, at 86 (Sept. 2015) (GAO-15-527).
[623] *Id*. at 40.
[624] *Id*.

investment [was] worth it."[625] According to Rocky King, one representative from CMS referred to Oregon as their "Hail-Mary."[626]

From: King Rocky [redacted]
Sent: Sunday, January 13, 2013 1:48 PM
To: BONETTO Mike * GOV; KOLMER Sean P * GOV; GOLDBERG Bruce; SAVAGE Louis D; SPEIGHT BARNEY H
Cc: Karjala Aaron; delaRosa Triz; LAWSON CAROLYN; Leibowitz Nora; Fauver Amy; Morawski Lisa; Harms Kelly; Jovick, Tom
Subject: CCIIO Visit

A thank you to Mike, Sean and Jan who helped make this week a great one with the Governor's attendance at our Board meeting.

The following are some general observations and, in some cases, some really good news.

The representatives of CCIIO headed out Friday afternoon to a) resume a vacation b) visit another state visit or c) to return to DC. They all had smiles on their faces.

* * *

Some **notable non-announcements** (meaning, they told us in our private meetings but made no public announcement):

1. 1. They will be announcing in the next week that our **grant request has been approved** in the amount of approximately $226 million, **$19 million less** than requested. They have also given us assurances that we could come in for a supplemental grant if the amount they did not approve is needed in year two.

* * *

During the debrief they made the following observations (I've selected only the high-lights of an hour meeting):

1. 1. No state is as far along as ours and they are convinced if we can't do it, many of the others will not be able to. We are not necessarily ahead in every detail within the categories of construction (policy, business and IT) but taken together we standout. There is only a handful that they believe are either with us or close (Maryland, Colorado, Rhode Island). They're giving us more dollars (on a per capita basis) than many other states and they believe the investment is worth it (we are their Hail-Mary as one of them put it).
2.
3. 2. One of their biggest concerns as they have talked or gone from state to state is the ability to bring up Medicaid in line with the Commercial side. They continue to have some skepticism as to whether we can pull this off (see number 3) and thus some continued and expanded IT funding for 2013 and 2014. They are behind us on this and know it will be down to the wire.

[625] Email from Mike Bonetto to Rocky King, Sean Kolmer, copying Amy Fauver, Aaron Karjala, Carolyn Lawson, Kelly Harms, Lisa Morawski, Nora Leibowitz, Triz delaRosa, Tom Jovick (Jan. 14, 2013) (GOV_HR00013743-45).
[626] *Id*.

1. 3. It is all about shared services environmental challenges – they know it and we know it. They expressed that is the same for many of the other states, albeit few are attempting the integration we are. The challenge with Medicaid is not unique to state based exchanges, it is also the biggest hurdle for the federal exchange and federal-state partnerships.
2.
3. 4. They were impressed with the energy of the meeting, the staff throughout their visit and the general office environment. Much different than they experience in DC.

Other than point two and three, I asked them at the end of the debrief to name just one thing they are having a heartache or general concern about, a critical observation — something, anything and it was nada. They left more impressed than before they arrived!

So thanks to the Governor's office, Legislator Oversight committee members, Cover Oregon's staff and the executive team for a great couple of days.

Rocky King's summary of CMS's visit shows federal regulators were extremely impressed with Cover Oregon. They were also, however, aware that the ambitious scope for Cover Oregon with regard to both the commercial side and the Medicaid side would likely result in the need for expanded IT funding for 2013 and 2014. An email from then-Director of CCIIO, Gary Cohen, to Cover Oregon, shows CMS was impressed by their recent visit to Cover Oregon.[627]

[627] Email from Rocky King to Mike Bonetto, Bruce Goldberg, Sean Kolmer, Barney Speight (Jan. 18, 2013) (GOV_HR00018013-20).

From: Cohen, Gary M. (CMS/CCIIO) [redacted]
Sent: Thursday, January 17, 2013 8:14 PM
To: Liz Baxter [redacted]; King Rocky; delaRosa Triz; Leibowitz Nora; SAVAGE Louis D
Cc: Cowley, Amanda D. (CMS/CCIIO); Kane, Terence S. (CMS/CCIIO)
Subject: Congratulations and thank you

Liz, Rocky, Triz, Nora and Lou:

Just a quick note to congratulate you on the grant award today and to thank you for your gracious hospitality on my visit last week. I thought you might enjoy reading the relevant portion of the blog post which I put up on the CCIIO intranet site and distributed by email to all CCIIO staff on Monday.

I look forward to continuing to work with you.

Warm regards,

Gary

Dear CCIIO:

Last week I traveled out to Oregon with Amanda Cowley and Terence Kane to attend a meeting of the Board of the exchange, Cover Oregon. I wish that each of you had the opportunity to get out into the country to see all the work that is being done, building on what we do here, to make the ACA's promise of quality, affordable health insurance a reality.

Everyone we heard from thanked us for the great working relationship that exists between the state and CMS. Oregon's Governor, John Kitzhaber, came to the meeting to express his appreciation for the work that the Board, Exchange staff and we are doing together. Dr. Kitzhaber stressed that the Exchange is a key part of the broader transformation of the health care delivery system that he envisions in Oregon.

In my remarks I congratulated Oregon for being a leader in implementing the ACA. I noted that other states will benefit from the work it has done as they develop their own exchanges.

The next day we saw a demonstration of Cover Oregon's online application and discussed a number of issues with the Insurance Commissioner and DOI and Exchange staff. It was great to hear familiar voices of subject matter experts from Baltimore and Bethesda conversing with our state partners. The folks in Oregon let me know that they appreciate that we strive to give them as much flexibility as possible as they design and build an exchange that is best for their state.

FINDING: CMS failed to ensure Cover Oregon and the Oregon Health Authority did not mishandle federal funds.

Documents show, however, that a few months later, in April 2013, OHA and DHS discovered they had misallocated $16 million and therefore ran out of funds earlier than expected.[628] Moreover, while CMS was congratulating Cover Oregon, the quality assurance vendor for the project, Maximus, was identifying the overall risk level for the project as high.[629] In the "QA Risk Level Tracking" Table provided in the Maximus report, Maximus stated that the scope, schedule, and product conduct for the project were all rated high risk during this period. Indeed, the "Overall Project Health" was rated as high risk in every monthly quality status report in the table provided in the March 2013 report.

[628] Gosia Wozniacka, How Ambitious Oregon Completely Botched Its Health Insurance Exchange, BUSINESS INSIDER (Dec. 21, 2013).
[629] Maximus, Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report for January 2013 (Issued February 15, 2013) (GOV_HR00045696); *See also* Maximus, Oregon Health Insurance Exchange Corporation (ORHIX)/Cover Oregon (CO) Monthly Quality Status Report for February 2013 (Issued March 13, 2013) (GOV_HR00045728).

Table 2: QA Risk Level Tracking

Quality Rating Category	June '12	July '12	Aug '12	Sept '12	Oct '12	Nov '12	Dec '12	Jan '13	Feb '13
OVERALL HEALTH	H	H	H	H	H	H	H	H	H
Business Mission and Goals	H	H	H	M	M	M	M	M	M
Roadmap	H	H	M	M	M	M	M	M	M
Scope	H	H	H	H	H	H	H	H	H
Schedule	H	H	H	H	H	H	H	H	H
Budget	M	M	M	M	M	M	M	M	M
Funding	M	M	M	M	M	M	M	L	L
Board Governance	M	M	M	M	L	L	L	L	L
Inter-Org Coordination	H	H	H	H	H	H	H	H	H
Organizational Management	M	M	M	M	M	L	L	L	L
Human Resources	M	M	M	M	M	M	M	M	M
Stakeholder Management	M	M	L	L	L	L	L	L	L
Communication	M	M	M	M	M	L	L	L	L
Project Management	H	H	H	M	M	M	M	M	M
Contract Management	M	M	M	M	M	M	M	M	M
Product Content	M	H	H	H	H	H	H	H	H
Testing	H	H	H	M	M	M	M	M	H

Bonetto testified that Maximus was an expert in the field. He stated:

Q. Okay. 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.[630]

Furthermore, the independent auditor for Cover Oregon raised red flags regarding the use of federal funds. At the April 10, 2014 Cover Oregon Board Meeting, the auditor "stated the organization is in compliance with the federal grant" and the representative from the auditor gave an "unmodified or 'clean' opinion of the audit."[631] He also noted, however, that the auditor found some technical compliance issues. Detailed information about the audit included in Cover Oregon's 2013 annual report highlighted these compliance issues with respect to federal grant requirements, and other issues related to inadequate internal controls to ensure the proper use of federal funds. In the report, some of the "significant deficiencies" in internal control identified by the independent auditor included:[632]

- Finding 2013-01: All expenditures charged to the federal program must be initiated and approved in accordance with Cover Oregon's policies and procedures to ensure expenditures are allowable costs to the grant. Out of 63 items tested, four items in the combined amount of $2,099 were identified in which the expenditure was initiated and approved by the same individual. . . . The lack of effective implementation of internal controls appears to be an oversight by management, compounded by changes in personnel. . . . The lack of sufficient documentation in support of effective internal controls may result in inappropriate charges against federal programs.

- Finding 2013-02: A subaward in the amount of $280,000 that was signed in July 2013 with the subrecipient was reported by Cover Oregon in November 2013 on the FSRS reporting website. This exceeded the reporting requirement to report by no later than the last day of the month following the month in which the subaward/subaward amendment obligation was made. . . . The described non-compliance appears to result from a misinterpretation of the Federal Funding Accountability and Transparency Act reporting

[630] Bonetto, Tr. at 138.
[631] Cover Oregon Health Insurance Exchange Corporation Board of Directors Meeting, Minutes (April 10, 2014).
[632] Cover Oregon, 2013 Annual Report, Independent Auditor's Report, Talbot, Korvola & Warwick, LLP (March 25, 2014), *available at* http://www.oregonhealthcare.gov/images/cover-oregon-annual-report.pdf.

requirements. . . . Cover Oregon was not in compliance with the Federal Funding Accountability and Transparency Act.

- Finding 2013-03: Out of the 18 reimbursement reports tested in our sample, two of the reports in the combined amount of $1,849,385 for payroll expenditures did not display evidence of supervisory review. . . . The lack of effective implementation of internal controls appears to be an oversight by management. . . . The lack of review reimbursement requests may result in inaccurate, incomplete, or untimely requests filed.

Although according to the independent auditor, these findings were made solely to determine the appropriate auditing procedures and "do not express an opinion on the effectiveness of Cover Oregon's internal control over compliance," they show management at Cover Oregon failed to properly oversee the use of the federal funds.[633]

CMS also failed to review many of the contracts entered into by the Oregon Health Authority and Cover Oregon. CMS failed to adequately review IT related contracts.[634] Emails show "[n]o Oracle contracts were approved by CMS."[635] First Data stated "it does not appear as if CMS reviewed or approved the Oracle purchase orders. First Data was told that they were discussed with CMS in quarterly calls, but CMS did not ask them to review.[636]

Documents also show CMS failed to review non-IT contracts. An August 17, 2014 draft memorandum from Liz Baxter to the Cover Oregon Board of Directors stated:

> [I]n the course of reviewing this and other contracts, Aaron has learned that required documentation for some of/many of?? Cover Oregon's non-IT contracts was not sent to the Centers for Medicare and Medicaid Services (CMS). He is in discussions with CMS to ensure they have all necessary information on current contracts, and he is implementing a new process to ensure that CMS receives proper documentation for all contracts moving forward.[637]

After the failed launch in October 2013, CMS provided Cover Oregon with non-binding technical suggestions. The evaluation conducted by CMS for this report occurred during January 2014.[638] On February 27, 2014, CMS sent Cover Oregon a "Technical Assistance Report For: Oregon Health Insurance Marketplace."[639] The report stated:

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[633] *Id*. at 23.
[634] Furthermore, Cover Oregon engaged in risky contracting practices as Cover Oregon's contracts with Oracle were not deliverables-based. *See, e.g*., Email from Aaron Karjala to Bob Cummings, Jon Lemelin, Ying K. Kwong, copying John Cvetko, Mark Liewergen, Matt Lane, Tom Mckivor (April 26, 2013) (Oracle_HOGR_00002743-49).
[635] Email from Suzanne Hoffman to Betty Uzupis, copying Sarah Miller (March 7, 2014) (Oracle_HOGR_00002739-42).
[636] First Data Report, at 36.
[637] Email from Patricia McCaig to Mike Bonetto (Aug. 17, 2014) (RMBG2001633-38)
[638] Email from Patty Wentz to Dmitri Palmateer, Nkenge Harmon Johnson, Sean Kolmer (March 14, 2014) (GOV_HR00051498-99).
[639] Email from Patty Wentz to Mike Bonetto (March 13, 2014) (GOV_HR00080028-29).

> Oracle has made progress in several systems engineering areas as evidenced by recent releases being delivered on time, and a stabilization of the system which has allowed CO to provide successful demonstrations of full functionality to stakeholders. However, there are still significant performance issues with the system such that, while the core functionality exists, the end user experience would be significantly diminished. Engaging in these improvements, while clearly showing progress, were not begun soon enough in the overall program timeline.[640]

B. The Obama Administration wondered what was going on at Cover Oregon

Documents show CMS expressed concerns about Cover Oregon in April 2014. As previously discussed, Goldberg was invited to testify before the Committee at an April 2014 hearing. Gregory Van Pelt testified instead. On April 2, 2014, an official from CCIIO sent a notification for a meeting after the hearing.[641] The meeting notification stated: "Oregon will be joining us in DC (after testifying at tomorrow's hearing) to talk through where they see Cover Oregon going forward, how that progress will happen, and the ongoing work we'll be doing together."[642]

The appearance of a non-Cover Oregon employee at the hearing left the program team at CMS confused. The day of the hearing, a representative from CCIIO called Triz delaRosa, the exchange's Chief Operating Officer, and asked "about what was going on in OR" and why the witnesses at the hearing "didn't have a great understanding of CO and the grant administration."[643] Triz delaRosa emailed Goldberg and Bonetto about the Administration's concerns. She wrote:[644]

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[640] CMS, Technical Assistance Report For: Oregon Health Insurance Marketplace, at 12 (Feb. 27, 2014) (COVEROR 000041-000065).
[641] Meeting notification from Courtney Williams (CMS/CCIIO) to Sean Kolmer (Sent April 2, 2014, Meeting time April 3, 2014) (GOV_HR00088659).
[642] *Id*.
[643] Email from Bruce Goldberg to Sean Kolmer, Mike Bonetto, Triz delaRosa (GOV_HR00079496-97).
[644] *Id*.

From: delaRosa Triz [redacted]
Sent: Friday, April 04, 2014 4:17 PM
To: GOLDBERG Bruce; BONETTO Mike * GOV
Subject: During my absence.

Bruce and Mike,

You need to know that I received a call from our program team at CCIO yesterday following the testimony of Greg Van Pelt and Sean Kolmer to several committees. They inquired about what was going on in OR, why we sent non-Cover Oregon staff to present to the subcommittees of Economic Growth, Job Creation and Regulatory Affair; and Energy Policy Health Care, and Entitlements of the U.S House of Representatives Oversight and Government Reform Committee and why these individuals didn't have a great understanding of CO and the grant administration. I let them know that I was out on vacation and was unaware of the decisions which resulted in these individuals being selected to make this presentation. I heard in the questions their frustration and disappointment with the lack of clarity about what was taking place in OR. Terence and others also expressed concerns about individuals within Cover Oregon changing positions and the apparent lack of understanding by the new staff about the grants and what funds could be used for in the future. Specifically they seem to be concerned about the decisions being made around the technology and the possibility of spending grant funds for things that we have already spent funds on....i.e. the possibility of paying for "something" twice.

The theme and tone of these conversations concern me because we have had a great relationship in the past with CCIO and our reputation and reliability is now being questioned.

Equally of concern is the discussion I had with Kevin Kelly last Thursday on the same issue. When I met with Kevin and his team, there seemed to be limited understanding of what we could use grant funds to pay for in the future for a possible technology solution. I made it clear that when we are self sustaining in 2015, development will not be an issue. But, given the task at hand, CO would have to consider the grant requirements, not just the procurement process when considering the use of grant dollars to pay for ongoing development costs throughout the remainder of this year. I raise this as in the past I have had this conversation several times with Aaron and his team. It is not just the procurement process that we must consider as CO proceeds, the grant processes must be considered.

Given these two discussions, I was concerned enough to share with you the substance of these discussions as there are a lot of eyes on CO. I want you to be aware of the concerns being raised to me by staff and now CCIO.

I will be back in the office on Monday and will be happy to discuss further.

Goldberg copied Kolmer on the message, telling Triz delaRosa that Kolmer "met yesterday with CCIIO and CMS folks."[645] Goldberg asked Kolmer if CMS brought the same concerns up during his meeting. Kolmer responded:

> Thx triz for the note. we had some conversation but not to the level of anxiety you are expressing here. What i heard was a general questions about direction and how we can partner moving forward. They want more clarity around timing around decisions etc so they know how to help and when we are thinking about.[646]

[645] *Id.*
[646] *Id.*

The emails show CCIIO officials were concerned that the new staff at Cover Oregon was not knowledgeable about the project and the appropriate use of the federal funding. They were confused by Cover Oregon's decision to send individuals to the hearing who were not completely familiar with the exchange. Although delaRosa was the Chief Operating Officer for the exchange, she was "unaware of the decisions which resulted in these individuals being selected to make the presentation."[647]

C. CMS failed to enforce the terms and conditions of the grants to Cover Oregon

Cover Oregon was the designated "administrator" for the majority of the federal funds received to build the exchange and had a duty to administer those funds. Kitzhaber's involvement in critical decisions (and especially the involvement of his political operatives) therefore raises questions about Oregon's compliance with the terms and conditions of the grant. According to the Funding Opportunity Announcement for Establishment:

> [R]ecipients and assigned points of contact retain the primary responsibility and dominant role for planning, directing and executing the proposed project as outlined in the terms and conditions of the Cooperative Agreement and with substantial HHS involvement.[648]

In a list of Frequently Asked Questions about Exchange Establishment Cooperative Agreement Funding, CCIIO stated that if a recipient wants to change the principal investigator on the grant, then the recipient must "seek prior approval from CCIIO before instituting any such change."[649]

The "Oregon Health Insurance Exchange" was identified as the administrator of the grants, and according to CMS reports, the responsible party for the "release of the full portal to the public" was the "responsibility of the CO Executive Team."[650] CMS believed that the "Oregon Health Marketplace is independently operated by Cover Oregon (CO)."[651] The fact that, in practice, decision-making authority vested with Kitzhaber, his staff, and political operatives, raises questions as to whether Cover Oregon violated federal requirements. Cover Oregon had a responsibility to comply with the terms and conditions of its grants, and in its draft report, Hamstreet & Associates noted, "[n]ot only is it important for the state to retain control

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[647] *Id*.
[648] CCIIO, Cooperative Agreement to Support Establishment of the Affordable Care Act's Health Insurance Exchange, Number: IE-HBE-12-001, at 44 (December 6, 2013).
[649] CCIIO, Exchange Establishment Cooperative Agreement Funding FAQs (last visited May 16, 2016), *available at* https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Exchange-establishment-faq html.
[650] With respect to implementing the technology portal, in the CMS Corrective Action Plan, Cover Oregon stated "Responsible Party(s): CO Executive Team and Oregon Health Authority (later known as JCC); involved Cover Oregon employees, Oracle, Deloitte, Maximus and other contractors." Cover Oregon Corrective Action Plan – Update #1 (January 31, 2014), at 4 & 7 & 8 (COVEROR 000001-10); CCIIO, *Oregon Health Insurance Marketplace Grant Awards List* (last visited May 16, 2016).
[651] CMS, *Technical Assistance Report For: Oregon Health Insurance Marketplace*, at 3 (Feb. 27, 2014) (COVEROR 000041-65).

over its health insurance market, but it is also critical that Oregon follows through on the representations it made when applying for and receiving federal funds."[652]

In fact, CMS communicated directly with the Governor's office in some cases, instead of with Cover Oregon staff.[653] Documents show Jennifer Stolbach, the Deputy Director for the State Exchange Group at CCIIO, directly emailed Sean Kolmer rather than Clyde Hamstreet, the Executive Director of Cover Oregon. Kolmer forwarded Stolbach's email to Amy Fauver and Clyde Hamstreet at Cover Oregon and wrote: "Not sure why I got on this but looping you in."[654]

CMS also used Kolmer as the primary point of contact to arrange discussions about Cover Oregon's transition to the federal technology.[655] To schedule a meeting to discuss the potential transition from the state-based exchange to the federal technology, CMS sent emails to "Sean (and Team)."[656] On April 24, 2014, Jennifer Stolbach emailed Sean Kolmer: "We're looking forward to meeting with you on Monday, and hope you are equally optimistic for our sessions together, and for Tuesday's meeting with the Administrator."[657]

From: "Stolbach, Jennifer B. (CMS/CCIIO)" <[redacted]>
Date: April 24, 2014 at 6:49:48 PM EDT
To: "KOLMER Sean P * GOV" [redacted]
Cc: "Williams, Courtney J. (CMS/CCIIO)" <[redacted]>, "Arnold, Grace C. (CMS/CCIIO)" <[redacted]>, "MacDonald, Cynthia M. (CMS/CCIIO)" <[redacted]>, "Chen, Jenny C. (CMS/CCIIO)" <[redacted]>
Subject: Material for Monday's meeting

Sean (and Team),

We're looking forward to meeting with you on Monday, and hope you are equally optimistic for our sessions together, and for Tuesday's meeting with the Administrator. Attached you will find an agenda for Monday's discussion – 10am – 3:30pm in Bethesda. We have also included here our latest version of your Proposed Functionality Matrix, that we have discussed and edited a few times together.

* * *

Kolmer forwarded the email to Edlund, Sarah Miller, Hamstreet, and Pettit.[658]

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[652] Email from Mark Schmidt to Maren Cohn (August 27, 2014) (GOV_HR00027205-17).
[653] Email from Nora Leibowitz to Amy Fauver, Sean Kolmer, Clyde Hamstreet, copying Jonah Kushner (April 24, 2014) (GOV_HR00039306-07).
[654] *Id*.
[655] Email from Sean Kolmer to Tina Edlund, Sarah Miller (April 27, 2014) (GOV_HR00073831-35).
[656] *Id*.
[657] Email from Sean Kolmer to Sarah Miller (April 28, 2014) (GOV_HR00072997-73003).
[658] Email from Sean Kolmer to Sarah Miller, Tina Edlund, Clyde Hamstreet, Alex Pettit (April 24, 2014) (GOV_HR00075444-51).

From: KOLMER Sean P * GOV [redacted]
Sent: 4/24/2014 11:31:28 PM +0000
To: EDLUND Tina D [redacted]; "Miller, Sarah" [redacted] Clyde Hamstreet [redacted]; PETTIT Alex * DAS [redacted]
Subject: FW: Material for Monday's meeting
Attachments: DRAFT Agenda - OR.docx; Cover Oregon Proposal and Function Responsibilities_4172014.docx

I have not review yet but wanted to get in your hands ASAP. Talk tomorrow.

sk

From: Stolbach, Jennifer B. (CMS/CCIIO) [redacted]
Sent: Thursday, April 24, 2014 3:50 PM
To: KOLMER Sean P * GOV [redacted]
Cc: Williams, Courtney J. (CMS/CCIIO); Arnold, Grace C. (CMS/CCIIO); MacDonald, Cynthia M. (CMS/CCIIO); Chen, Jenny C. (CMS/CCIIO)
Subject: Material for Monday's meeting

Sean (and Team),

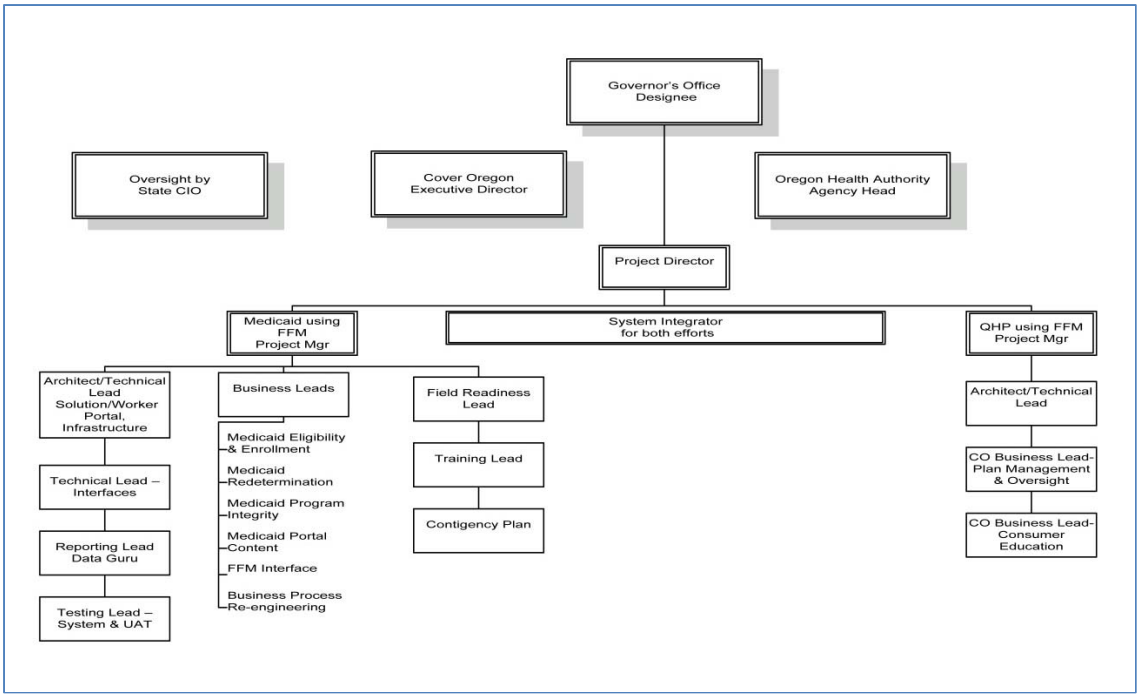
We're looking forward to meeting with you on Monday, and hope you are equally optimistic for our sessions together, and for Tuesday's meeting with the Administrator. Attached you will find an agenda for Monday's discussion – 10am – 3:30pm in Bethesda. We have also included here our latest version of your Proposed Functionality Matrix, that we have discussed and edited a few times together.

In order to facilitate the discussion, I have also listed below questions that might come up in the course of each session's discussion. Please know that we might not get to all of these – nor is this a script for our time together, just some suggestions to help effectively and efficiently direct our conversation, given our limited time.

* * *

A PowerPoint presentation developed for an April 28, 2014 meeting between CMS officials and representatives from Oregon about the possibility of Oregon utilizing the federally facilitated marketplace technology identified the Governor's office as the lead for the project.[659]

[659] PowerPoint for Oregon State Meeting, *Planning the Go Forward: Utilizing Federal Facilitated Marketplace Technology*, at Slide 28 (April 28, 2014) (COVEROR 000066).



D. CMS failed to adequately respond to Cover Oregon's decision to switch to HealthCare.gov

Rather than continuing to build out the technology platform, Cover Oregon switched from the state-based information technology (IT) platform to the federal technology platform, HealthCare.gov. After accepting over $300 million in grants from CMS, Cover Oregon and the Oregon Health Authority laid out specific plans for an ambitious technology project. Then, Oregon abandoned that investment and negotiated the terms of a switch to the federal platform. Oregon secured a substantial number of concessions from the federal government in the negotiations with CMS. Rather than recoup lost taxpayer dollars, CMS made it financially attractive for Oregon to abandon its investment and move to the federal exchange.

Documents show Cover Oregon leadership expressed concern that if they decided to switch to the federal technology, Oregon might have to re-pay CMS the total amount of the grants for violating the terms and conditions of the grant.[660] CMS, however, did not make Oregon repay any of the federal grants.[661]

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[660] *See, e.g.*, Attachment to Email from Bruce Goldberg to Aaron Karjala, Alex Pettit, Bruce Wilkinson, Chris Blanton, Erick Doolen, George Brown, John Cvetko, Liz Baxter, Matt Lane, Robin Richardson, Sean Kolmer, Triz delaRosa, Teri Andrews, Tina Edlund, T. Mckivor, copying Laura Hutchings (March 7, 2014) (GOV_HR00090297-390).

[661] U.S. Gov't Accountability Office, *State Health Insurance Marketplaces: CMS Should Improve Oversight of State Information Technology Project*, at 86 (Sept. 2015) (GAO-15-527); U.S. H. of Rep., Comm. on Energy and Commerce, *Misleading Congress: CMS Acting Administrator Offers False Testimony to Congress on State Exchanges* (May 9, 2016).

Furthermore, under the law, exchanges were required to be self-sustaining after January 1, 2015.[662] The PPACA gives states with their own exchanges broad discretion to determine how best to achieve sustainability. Most states using the federal technology, however, do not have the same degree of latitude. Instead, most Qualified Health Plans using HealthCare.gov pay a 3.5 percent user fee on plans sold on the federal exchange to offset the administrative costs of running the exchange.[663] States using HealthCare.gov that are still considered to have a state-based exchange (Hawaii, Nevada, New Mexico, and Oregon) have more flexibility than other states using HealthCare.gov to set and collect user fees on plans sold in their state.[664] Initially, CMS allowed Oregon and Nevada to retain 100 percent of their carrier assessment fees.[665]

At a hearing before the House Committee on Energy and Commerce in September 2015, the Director of the Oregon Department of Consumer and Business Services (DCBS) testified that as of September 2015, "the federal government provides its technology platform to Oregon at no charge. DCBS understands that the federal government will begin charging for the platform in 2017."[666] According to media reports, Oregon is now "looking into running its own exchange again, but with another state's software."[667]

Documents show CMS and Cover Oregon changed the term used to describe Oregon's marketplace in February 2015. On February 9, 2015, Amy Fauver wrote: "I also wanted to flag that both CO and CMS/CCIIO are not referring to OR as a Supported State based marketplace anymore since there is not such status in law or in administrative rules."[668]

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[662] Justin Giovannelli and Kevin Lucia, *Realizing Health Reform's Potential: The Experiences of State-Rune Marketplaces That Use Healthcare.gov*, THE COMMONWEALTH FUND (Sept. 2015).
[663] *See* Austin Bordelon, *Supported State-Based Marketplaces Forge New Option for States*, LEAVITT PARTNERS (Nov. 11, 2014).
[664] Robert King, Lawmakers angry states may improperly collect Obamacare fees, WASHINGTON EXAMINER (Dec. 9, 2015).
[665] Austin Bordelon, Supported State-Based Marketplaces Forge New Option for States, Leavitt Partners (Nov. 11, 2014).
[666] Written Statement for the U.S. House of Representatives, Committee on Energy and Commerce, Subcommittee on Oversight and Investigations Hearing By Patrick Allen, Director, Department of Consumer and Business Services, State of Oregon (Sept. 29, 2015).
[667] Associated Press, *Oregon revisits running own health exchange as new federal fees loom*, THE OREGONIAN (Dec. 11, 2015).
[668] Email from Amy Fauver to Melissa Navas, Sean Kolmer (Feb. 9, 2015) (GOV_HR00022985).

From: Fauver Amy [redacted]
Sent: 2/9/2015 7:22:09 PM +0000
To: KOLMER Sean P * GOV [redacted]; NAVAS Melissa * GOV [redacted]
Subject: SBM status

Good morning, I'm sure you saw the OPB story this morning with the incorrect info that the Supreme Court had ruled already. OPB is correcting the web content and will read corrections on air. I also wanted to flag that both CO and CMS/CCIIO are not referring to OR as a Supported State based marketplace anymore since there is not such status in law or in administrative rules. Instead we are calling OR a state based marketplace using the federal technology.

Thanks,
Amy

X. Non-government Email Accounts Were Used to Conduct Official Business

FINDING: A substantial amount of Cover Oregon business was conducted through personal email accounts.

Documents show a substantial amount of Cover Oregon business was conducted through personal email accounts. Members of Kitzhaber's staff, some leadership at the Oregon Health Authority, and some Cover Oregon leadership frequently used their private email accounts to discuss Cover Oregon issues, including the technology decision. This most commonly occurred when the conversations included individuals working on Kitzhaber's reelection campaign.

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. Oregon law provides that a public record "includes any writing that contains information relating to the conduct of the public's business . . . used or retained by a public body regardless of physical form or characteristics."[669] ORS § 192.001 states that the "records of the state and its political subdivisions are so interrelated and interdependent, that the decision as to what records are retained or destroyed is a matter of statewide public policy."[670]

The use of non-government email accounts creates challenges for recordkeepers and makes it less likely that the state can comply with records requests.

XI. Conclusion

CMS's failed oversight of the development and implementation of Cover Oregon resulted in millions of wasted taxpayer dollars. Oregon decided the state should establish a state-based exchange and was awarded more than $300 million in federal grants. Then, the state-supported

[669] ORS § 192.410(4)(a).
[670] ORS § 192.001.

IT platform was abandoned for HealthCare.gov and the state was permitted to use the federal platform for free. Cover Oregon is not unique. Several other states have had significant problems developing and implementing a health insurance exchange.

The investigation showed that CMS should reform its grant and oversight process to prevent these types of failures in the future. The documents and testimony show CMS officials applauded the progress at Cover Oregon and awarded the project additional federal dollars when, at the same time, the quality assurance vendor for the project rated the project's overall health as "high risk." CMS permitted Oregon to primarily contract on a time and materials basis rather than contracting for specific deliverables, which departs from contracting best practices.

Moreover, CMS failed to ensure any meaningful evaluation of the existing state-supported IT platform was conducted before allowing Cover Oregon to switch to HealthCare.gov. These findings are consistent with those from other investigations of CMS's oversight of the exchanges. The September 2015 GAO report was highly critical of CMS oversight of the exchange grants.[671] Similarly, in March 2015, the HHS Inspector General issued a report titled "Maryland Misallocated Millions to Establishment Grants for a Health Insurance Marketplace."[672] In the report, HHS OIG found that "the State agency did not allocate costs to its establishment grants and Medicaid in accordance with Federal requirements, the terms and conditions of the establishment grants, and its CAP [Cost Allocation Plan]."[673]

Clyde Hamstreet said of the decision-making process at Cover Oregon that they needed to "get politics out of the picture."[674] He was right. The Governor and his political advisers made decisions with the Governor's reelection campaign in mind—their priority was not to be good stewards of taxpayer dollars. The politicization of decisions related to Cover Oregon compounded the lack of effective oversight by CMS, and taxpayers lost more than $300 million.

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[671] U.S. Gov't Accountability Office, *State Health Insurance Marketplaces: CMS Should Improve Oversight of State Information Technology Project*, at 86 (Sept. 2015) (GAO-15-527).
[672] Department of Health and Human Services Office of Inspector General, Maryland Misallocated Millions to Establishment Grants for a Health Insurance Marketplace (March 26, 2015).
[673] *Id*. at ii.
[674] Cover Oregon Final Report Presentation, at 21 (Sept. 29, 2014).