GOVERNMENT SERVICES ADMINISTRATION

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MASS & FAKE COMMENTS

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PUBLIC MEETING

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THURSDAY
JANUARY 30, 2020

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The Public Meeting met in the General Services Administration Auditorium, 1800 F Street, NW, Washington, D.C., at 2:00 p.m., Tobias Schroeder, Director, presiding.

PRESENT
TOBIAS SCHROEDER, Director, eRulemaking Program, Office of Regulation Management, General Services Administration
VIRGINIA HUTH, Deputy Associate Administrator, Office of Regulation Management, General Services Administration
DOMINIC MANCINI, Deputy Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget
JESSICA SALMOIRAGHI, Associate Administrator, Office of Government-wide Policy, General Services Administration

PANEL 1: THE IMPACT OF MASS AND FAKE COMMENTS IN RULEMAKING
OLIVER SHEROUSE, Small Business Administration
SANITH WIJESINGHE, MITRE
PATRICK HEDREN, National Association of Manufacturers

PANEL 2: PUBLIC POLICY PERSPECTIVES ON MASS & FAKE COMMENTS
STEVEN BALLA, George Washington Regulatory Studies Center
REEVE T. BULL, Administrative Conference of the United States
MICHAEL FITZPATRICK, Google

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(2:01 p.m.)

MS. HUTH: Good afternoon. Thank you for coming to GSA today. And thank you also to our virtual audience. We have several hundred participating through virtual channels.

My name is Virginia Huth and I am the Deputy Associate Administrator of the Office of Regulation Management at the General Services Administration, which houses the eRulemaking Program Management Office, as well as the Regulatory Information Service Center. The important role of the Administrative Procedure Act and specifically the notice and comment requirements of the rulemaking process are pillars of the democratic tradition of ensuring that the workings of government are open to the American people. And that the federal government is held accountable for its decisions.

I'm excited today to bring to you a stellar panel to discuss the technical, legal and policy challenges that relate to mass and fake

comments, a key part of our process. I am excited to bring to you today the eRulemaking Program and it's governed by 221 participating agencies and sub-agencies who are members of the process. The organization is co-chaired by the Office of Information and Regulatory Affairs at OMB and the Office of Government Wide Policy at GSA.

I'm delighted to introduce our Co-Chairs, Dominic Mancini and Jessica Salmoiraghi. First, Mr. Mancini, he is the Deputy Administrator -- They're in the wrong order here -- Deputy Administrator of the Office of Information and Regulatory Affairs. He's an economist by training with a PhD from the University of North Carolina at Chapel Hill. And he began his federal career at the Food and Drug Administration.

He has spent the majority of his 20 year career in public service at the Office of Information and Regulatory, working his way up the ranks with the latest seven years serving as

Deputy Administrator with frequent acting positions as the Acting Administrator. With that, I present to you the honorable Dominic Mancini for opening remarks.

MR. MANCINI: Thank you very much, Virginia. I'd first like to thank Virginia and her colleagues for actually being the force behind organizing this. This is an opportune moment to talk about these issues. I'd also like to thank her because one of her many innovations here is she gave Jessica and I a total of six minutes to talk. So you should thank her for the short remarks I'll have today.

Really I have the opportunity, I'm going to step back a little bit, of really -- I'm not going to say much of anything today because this is your opportunity; the public and the agencies and the stakeholders to tell us about what you think about these issues. This is not -- if you know OIRA, you know that we probably have strong opinions about many things, but this is not the opportunity for us to express them.

So I'm going to stay for as long as possible. My colleagues are here and also our colleagues with GSA and that's really it. We're looking forward to hearing all the different legal technology and policy and the unique combination of perspectives that when you're considering this issue and its interaction with the regulatory process.

So with that, I'll invite Jessica to also come up and say a couple of things.

MS. HUTH: Yes. Ms. Salmoiraghi is the Associate Administrator for the Office of Government-Wide Policy at GSA. In addition to the oversight for the Office of Regulation Management, she oversees seven other offices that provide government-wide policy and guidance for programs such as Real and Personal Property, Travel, Regulatory Policy Development, Government-wide Programmatic Support, and Information Technology.

Ms. Salmoiraghi also serves as the Agency's Chief Acquisition Officer. Prior to her

public service at GSA, she served in various leadership positions in architecture, engineering, and construction organizations focused on national and international procurement.

MS. SALMOIRAGHI: Good afternoon and thank you all so much for that warm welcome. And thank you, Virginia. I appreciate it. As the new Co-Chair for the eRulemaking Executive Steering Committee, I'm excited about the opportunities for transformation that lie ahead. And that you are here to help shape that future.

This program is the start -- I mean today's program is the start of a robust discussion to better understand the challenges and potential solutions to improve the state of electronic rulemaking. This will occur in three areas. First, modernizing the service with secure and innovative technical solutions that are responsive to the needs of the community. Second, responding to the challenges of mass and fake comments in the regulatory process. And

third, further integration of the larger regulatory system.

I serve, as you've heard as the Associate Administrator of the Office of Government-Wide Policy at GSA. GSA, OGP's goal here is to provide innovative solutions for the future of government. I oversee eight offices that helped to developed government-wide regulations, support government-wide initiatives, and collective promulgate best practices.

When the opportunity emerged to take on the eRulemaking PMO, I saw it as a natural fit to our existing work because OGP also oversees the Regulatory Information Service Center on behalf of OIRA. Bringing these related organizations together, we created the Office of Regulation Management.

I want to thank my Co-Chair, Dominic and his team for their help and support as we stood up this program at GSA. And also EPA for their partnership in completing a successful transition of the PMO.

Moving ahead, I am committed to improving the quality of services received by our partner agencies while addressing these critical challenges. These include the role of fake comments in the regulatory process and transforming the system that both the public and our agency partners use.

I am excited about the new capabilities that modernization will bring. We envision better integration of data and IT across systems to improve analytics in using innovative approaches to promote public access, accountability, transparency, and efficiency across the system.

We have a very full agenda today. And as Dominic set a very short stage, I will too. Thank you again for participating. And I now turn it over to Tobias Schroeder, Director of the eRulemaking PMO. Thank you again.

MR. SCHROEDER: Thank you. And I'm trying to avoid the feedback here. Thank you to all in attendance, both in-person and virtually.

We'll be using notecards to ask questions. At any time during the panel, if you need a notecard, raise your hand and one of our runners will give you one. The two runners, if you don't mind standing up and raising your hand. Okay. If you've completed your question, just simply raise your hand that's holding the notecard and we'll come by and collect them.

We're taking questions through our virtual connections. Just type in your question to the chat window and we'll queue them up, along with the other questions for the people in the room.

Today's meeting is being recorded. And the transcript will be available to all those who are unable to attend today. If you want your comment on any aspect of the rulemaking modernization to be a part of our official docket, you must go to Regulations.gov and submit it to us by April 30th.

Today is an opportunity to elicit question and answer and expose you to some of the issues related to fake comments. We're accepting

comments on all aspects of modernization of rulemaking through electronic services.

For both comments submitted through Regulations.gov and the questions submitted to today's panelists, please keep in mind that our focus in on overall regulatory process and policy, services, and information technology that can support the integrity, security efficiency, and effectiveness of the process.

Any questions or concerns that you have on individual rulemakings should be directed to the agency who is developing or amending the rule.

With that said, I'd like to turn it over to our esteemed speakers. We're going to engage in 15 minutes of audience Q&A following the completion of the prepared remarks.

So I'd like to introduce Patrick Hedren. He's the Vice President of Labor, Legal, and Regulatory Policy at the National Association of Manufacturers. You can go ahead and come up on the stage as I announce your name. Dr. Sanith Wijesinghe, he's the Innovation Area Lead with

MITRE. And Oliver Sherouse, Regulatory Economist with the Office of Advocacy at the Small Business Administration.

Patrick's the Vice-President of Labor, Legal, and Regulatory Policy at the National Association of Manufacturers, which advocates for 14,000 member companies. He leads NAMs advocacy before Congress and the Executive Branch on smarter regulations, commonsense legal reform, and labor and employment policies that fit modern manufacturing workforce. Prior to his work at NAM, he served as the senior counsel for a Fortune 15 manufacturing company where he helped to grow and manage the company's regulatory advocacy practice.

Dr. Sanith Wijesinghe is the Innovation Area Lead at MITRE. MITRE is a federally-funded research and development center that assists the U.S. federal government with scientific research, analysis, and explores new and expanded uses of technologies to solve problems.

And finally we have Oliver Sherouse. He's a Regulatory Economist with the Small Business Administration, Office of Advocacy, the independent voice for small business within the federal government. Since the enactment to the Regulatory Flexibility Act in 1980, the office has worked with federal agencies to avoid excessive regulatory burdens on small businesses. Prior to SBA, Oliver was the Research Analytics Lead for a program of economic research on regulation at the Mercatus Center at George Mason University.

Okay, so I'll hand it off to the panelists, starting with Patrick.

MR. HEDREN: There we go. And it's loud. So first up, let me just say thank you for inviting me to be here and for hearing the manufacturing voice on issue today. And then second, let me say, it's a little alarming to me in some respects to see that, looking out into the crowd, I think I know about half of you on a first name basis. So we probably need a little

bit more fresh blood in this regulatory nerd community that we live in. Third, I was kind of giggling in the introduction, because I see my former boss sitting directly in front of me who's on a different panel as well. And I'm sure we'll probably say some similar things.

So let me just kind of keeping it informal. I think that this subject is an interesting one. The context and the politics around the mass comment campaigns are very, very interesting. But I think, you know, a few things jumped out at me as we're going through this. And we've very much kind of what, I would consider power users of the regulatory process. We have a clear point of view for the manufacturing sector. We weigh in frequently in agency actions across the entire federal family, whether they're independent agencies or executive agencies and departments. So we have quite a lot of experience and exposure to the tools that really underpin the system. And there's a lot of value in those tools.

So start there. The federal tools are tremendous. We're talking about what we can do, I think, today to evolve those tools and where possibly we need to be rethinking the way that the regulated community and the public have responded and created new types of campaigns in these tools. But fundamentally what we're dealing with is very much best in class. And as you go around the rest of the world, you can see that clearly. We are a model for other countries around the world and what they do for the regulatory process. And when they look to improve, they look to us. And they work with Dom and team more often than not to do that. So we're in a very privileged place there.

So from mass comment campaigns -- and maybe I'll start here and the make a couple unrelated, but I think, kind of more fun points after on maybe where the tool could go. And how we evolve into kind of the next phase of our engagement with our government.

But on mass comment campaigns, it

occurs to me that one of the principle things that we're dealing with is identifying what exactly is the problem that we are trying to address? And on that front, I think it's a little bit unclear. And I think everybody is familiar with some of the tensions in this space. I mean commenting on a regulation is one of the ways in which we petition our government for a redress of grievances. It's one of the ways we exercise our First Amendment rights. And it's one of the ways that we can weigh in substantively on a rule.

We can talk about legal issues. We can talk about economic issues. We can try and guide an agency's preference in the way that they select a regulatory alternative. But we can also just be heard. And we are probably as guilty of this as anybody else. We encourage our members to reach out and be heard when they care about something. Is that legally relevant in rulemaking? Not really unless there are kind of more advanced arguments as to why an agency must

or should listen to what people are saying in that forum. But I think it's a real way that you can be heard.

So that leads me to my kind of second point. As we're trying to figure out what the problem is, I need help trying to figure out what the audience is. And I think there's multiple audiences for rulemaking. And I have a feeling that folks in the room are kind of in one place or another and are come with an institutional perspective like that. But I think at the very least, you can divide up three core audiences that matter for a tool like Regulations.gov for the commenting process at large.

One is obviously the agency. If you're the agency, you have to have some tool where you can aggregate in one place what you receive. And simplify so that you're not missing something. So that there's an ability to point to a comment and say that anybody can see that, that comment is in there and what it says. And here's how we respond to it.

Another audience is just the public. And this goes for the regulated public, but I think it's the public at large as well. For the regulated public, there's a lot of value going into a docket and figuring out where everybody else might be. That can be a little tough to do sometimes. And I think as many of us know, you know, you do an 1159 filing as done everybody and you think, I wonder what the other people are saying. And then about a week later as all the comments post, you find out oh, I wish I had known they were going to say something like that. I have rebuttal. I have something that I could say to add to that debate. So that's another dimension.

The third that I'd point out, and I'm sure there are many more that we could kind of think of is Congress -- is policy makers. This is not just a tool for the agency to develop the rule. It's not just a tool for us to see what people are saying about it. It's a tool to figure out where are people? How are we feeling

about this regulatory program? And what are we trying to achieve with it? And I think it's tremendously valuable as somebody who frequently trucks up to Congress with a comment letter in tow, which by the way, no one will ever read because it will be 30 pages, so it will be on a shelf.

But there's value in knowing that here's where your constituents are. Here's where you industries are. Here's where your consumer groups and your public welfare groups are going to come out on this rule. And I think there's kind of transparency value to that. So it informs the future policy making and response. And I think as we're dealing with things like regulatory reform and other ways that we try to involve the regulatory conversation from own perspective, there's a lot of value in showing where there might be shortcomings in a statute and the choices that an agency is empowered to make. And it will come out in the process.

So now's the moment that I should say,

we are absolutely a participant in encouraging people to file comments that are similar to one another. I think that's a common way that people find engagement with their membership, with their constituency, with other groups that support who they are. And we're no different in that respect. So we want to be very careful to not amend the tool in a way that this cracks down on something that's completely normal, permissible, constitutionally valid, and a sort of positive way to engage the government.

There are some problems in there. There are abusive comments. There are, you know, certainly questions about what agency should be forced to respond to. But I think, to me those seem to be surmountable. And then maybe I'll kind of end here. I guess I've probably got a little more time. But I think what we need to consider when you zoom out to the 30,000 foot view and you take for example, FCC rulemaking, I think we're all familiar with, there's a big to-do. There is a lot of public pressure around

other rulemakings. I think it popped it into the public psyche in a very real way. And we saw that people were getting engaged in this process that never would have before.

Are we sure that we've communicated with the public on what this is that we're doing? Does the public understand what a comment is? It's not a vote. It's a way of engaging with an agency. But I think the way that it is described for better or for worse, can be a little bit troubling. And I wonder if some of that is generating the angst. If that's sort of providing some of the impetus to have a forum like this and to talk about evolving the tool and there's a fundamental misunderstanding of what it means to engage in the process to change a rulemaking. And on that front, I'm not sure if there's a solution in the tool to do that. But I do think that it's an important issue for us to address.

But with that, let me kind of stop and pass it on to the next co-panelist.

MR. WIJESINGHE: Thank you. So my name is Sanith Wijesinghe. I lead one of MITRE's research programs dedicated to looking at policy issues. So I wanted to thank Tobias and Virginia for inviting MITRE to be on this panel today. So I want to kick it off with answering a question that has been on the table leading up to the event, which is what's the big deal about fraudulent comments? You know, why should anyone care about these to begin with, given that we have kind of a gating mechanism downstream from our agencies, they can resolve it. And so what's the big deal?

So I think it's worth making explicit some of the real social and economic costs that arise with these fraudulent comments. I think the first one to address is with respect to identify theft. Since you're all very familiar with the FCC Net Neutrality 22 million comments. And just over half of them were identified as being from stolen identities.

So you know, these are identities

stolen from citizens at large, you know, high profile senators, celebrities, Elvis was supposed to be commenting on a couple of those. You know, and speaking of, you know, the cost involved there, you now have on the public record, a statement attributed to someone without their consent. And it takes quite a lot of effort to correct that. And not everyone has the resources to do it. And this follows a similar pattern for identify theft that we see elsewhere with it that's identity theft fraud for insurance or benefits or taxes where in this case, there's also deceased individuals whose identities are stolen and their next of kin on the hook to try to resolve the issues. So that's a very clear cost to society.

There is also the association of cost for our agencies. You know, is it a real good use of tax payer money to process comments that probably originate in foreign countries? Why are we spending this time, you know, accommodating that? Given that we now have Evidence Based

Policy Act, the overhead associated with tracking down all of the assertions made in these comments, you know, is a non-trivial effort. And we really need to make sure we -- our policies are truly evidence-based and not fake evidence-based. So there's really an efficiency function there as well to consider.

I think, you know, these economic arguments I guess there's some way to perhaps quantify. But there's the larger kind of impact to our democracy at large in terms of how it skews to the discourse. And you know, the cost there, you know, potentially unimaginable of all the different ripple effects that has. So it is really important to detect these. And some of the work we started in this area started off with a hypothesis that a lot of these fraudulent comments aren't isolated events by themselves. They're part of a larger social media campaign where, you know, it's part of a bigger effort to influence a certain perspective.

So we tested that hypothesis against

some of the kind of high profile rules. It turns out to be true that there is fairly good tech similarity between those comments in the public rule, as well as comments or postings on Facebook and Twitter, and YouTube where you can see pretty close, you know, one to one matches.

Now using that approach, you can kind of catch some of the obvious folks who, you know, their basic strategy is you know, proof through repeated assertion, which is in this case, you know, just key words, changes here and there. You know, slight modifications.

But if you're aware, there's a paper that came out recently from a Senior at Harvard called Max Weiss who created bots that generate deep fake comments. And he submitted a thousand of those to Idaho Medicaid ruling. And basically they were indistinguishable from human comments. So there's kind of an arms race that results as these technologies mature. Interestingly, Max Weiss laid out the entire methodology in his paper. And at the end he says, this is just for

experimental use. Do not try this at home. But you know, the genie's out of the bottle. And if you have someone who's just a Senior in college who is able to do this, imaging what someone with, you know, a lot more resources can do.

So there's an important question because there's going to be lots of analytics that gets, you know, thrown at this problem. And you're going to start to figure out what are some of the legal guardrails, especially as it pertains to the Administrative Procedures Act that we need to be kind of mindful of to make sure that we don't overstep any kind of, you know, charging activity or decision making that really should be human driven and not driven by some kind of automated machines. So that's a key area of our research. We're trying to figure out, you know, how far can we push these analytics?

So that leads into a question of, you know, what are some of the opportunities to mitigate these comments -- fraudulent comments?

And can we do it without creating this arms race? And some of the ideas that are out there right now including things like CAPTCHA, I think raise the bar in terms of helping us, you know, take out some of those early kind of, really not so smart bots. But it's just only going to get worse.

And I think there's a need to try to think outside of the box, beyond just the system immediately. Is there alternative ways that we can structure perhaps rules so that it's not a free for all comment, but rather potentially a more directed rule comment process where you can actually map those comments to particular provisions? It's possible that bots could still kind of attack those as well. So it's not kind of be all, end all potential solution. But it does increase the cost and potentially streamline the process downstream for our agencies who have to make sense of these rules. And if it's in completely unstructured format, you're trying to guess what exactly they might be saying. With

this kind of self-referencing input, there may be an opportunity to help there as well.

So with that, I will pause and hand it over to my colleague.

MR. SHEROUSE: Thank you. And thank for already turning on the mic so I don't have to figure out how to do it.

So my name is Oliver Sherouse. I'm a regulatory economist with the Office of Advocacy at the Small Business Administration. And I also want to join my panelists in thanking GSA for putting on this panel. I should start off by clarifying that my remarks today represent solely my own views. And should not be taken as the views of the Office of Advocacy or Chief Counsel of the Small Business Administration or of the U.S. government.

And furthermore, I should point out that while the Office of Advocacy is housed within SBA, it's actually an independent office. It doesn't speak for SBA. And it has a distinct role of representing the views of small

businesses to the federal government, especially throughout the regulatory process.

Finally let me say how excited I am personally to be a part of this discussion, eRulemaking and the use of new technology in the regulatory process are issues I've been working on even previously in my career before coming to Advocacy. Although Advocacy's work is often also related to these topics.

Before focusing on the phenomenon of mass comments, it's worth remembering why we have a public comment process in the first place. Which is that the public has knowledge that regulators do not have and that they need to do their jobs well. And that is true no matter what the regulators to be doing. The common process therefore needs to retrieve that information as effectively and as completely as it reasonably be achieved.

My comments from small businesses are particularly important for three reasons. First, small businesses play a significant role in the

life of the economy really outside its role. About 47 percent of the private sector is employed by small businesses as defined by SBA. And small businesses create about 2/3 of net new jobs. So it's a very important role in the economy.

Second, small businesses generally have less of a direct presence in other parts of the regulatory process than large firms do. They just don't often have sophisticated government affairs that are in D.C. And third, small businesses generally have less capacity to absorb regulatory costs than large firms do, especially when those costs are fixed across entities simply because they have smaller revenue. So for those reasons, it is essential that the public comment process provide a reliable way for regulators to get the information they need from small businesses.

So with that in mind, how do the poor quality mass comments affects small businesses in the comment process? The most obvious problem

would be if legitimate small business concerns are just lost in the flood. You can't find them. The technology that we're seeing now, it's like duplicate detection, are already mitigating that concern to a certain extent.

A second more subtle effect might be the tendency -- and this is something Patrick was talking a little bit about -- to discount the importance of a legitimate small business concern just because it happened to be in a mass comment. A good point is not less of a good point because 10,000 people happen to agree with it.

But even more important than those two is the chance that a small business will sign on to a poor quality -- and I'm emphasizing here "poor quality mass comment", instead of -- where they might have been willing to go back and write a high quality one. Not everyone who does sign onto that kind of comment would be willing to write a high quality one. But if you could convince even a small percentage to convert from one to the other, it could really substantially

enhance the breadth and the depth of the record and gives agencies a far better perspective on small business concerns.

So the question is why would a small business center choose to sign on to a low quality mass comment rather than write a high quality one. Well for one reason -- and this goes to something that's already been discussed -- someone might not be familiar with the APA and might not understand what makes comments effective. And the Office of Advocacy, others do a lot of work to educate on that, but it's still hardly what you would call common knowledge throughout the economy.

Second, they might only find out about a proposed regulation when they're presented with one of these mass comments. And they might not have time to go back and investigate and then write a full comment letter right before the comment period is going to close. Because there aren't a lot of small business owners who read the Federal Register every day.

Finally, writing a detailed comment letter is hard work, especially if you're not used to reading regulatory text. Especially if you're trying to find out where the assumptions are or even where the agency is to specifically solicit feedback.

MR. SHEROUSE: -- low quality mass comments is not to report problems so much as a symptom of a problem that it's difficult to write effective comments. So a key question is how can the cost of writing a comment -- a good comment -- Did we lose the mic? It's flashing. Can you guys hear me? All right, there we go.

So we can think of low quality mass comments as not the core problem so much as a symptom of the problem that it is difficult to write effective comments well. So the question is how can the constant writing of a good review process have the lowest possible relative to cost of the mass comment? And I think this is where eRulemaking and related technologies might be able to help.

But in addition to mass comments, there's been a bit of discussion of comments with false names. I'm thinking about the goal of that earlier of retrieving information from the public. I do want to start with a little bit of explanation because while it's not hard to imagine various reasons to send anonymous comments through comments with fake names, there may also be understandable reasons. Even if there are ones that you and I wouldn't necessarily encourage or approve.

It's not difficult to think of why a business might feel reluctant to criticize its regulator on the record. That's just the reality. So while it's understandable to want to try to identify these comments, we should be very cautious about assuming that they don't have any value at all or dismissing them without at least checking. Because if the comment is correcting an error or fills in a data gap or suggests a workable alternative, it probably shouldn't be thrown away even if the name at the bottom is

wrong or missing. So throwing out solutions, it seems clear that the shift to eRulemaking presents an opportunity to make some improvements in these areas. Marshall McLuhan said the medium is the message here. I want to say that it's the platform that's the message. By which I mean that the way that the platform is structured and the interface to it will have a huge impact on how users interact with it.

And there are two facets of the eRulemaking platform that I want to emphasize. The first is discoverability. And while groups like Trade Associations and groups like the Office of Advocacy have a role to play here, an eRulemaking platform can provide tools to make it easier for small businesses and others or even those other groups to identify relevant rules and supporting documents -- and supporting documents as early in the process as possible. I primarily use Regulations.gov as a user. I'm not a regulator. So I can tell you it can be more difficult than you might expect, even for an

experienced user to find the exact right docket and the exact right document within that docket.

Some of the research from earlier in my year focused on using machine learning to identify potentially effective industries for a given regulation. But that's really only one example. You could do the same thing with trying to identify effective products for example or participation in particular programs. And if you want to go even further in a platform that enabled regulations to have been put with that kind of information directly in a machine readable format, that information could be even more reliable and precise. Whether or not features like that are built into the platform directly, there should certainly be continued development and support of a robust platform API, so that outside groups can continue to experiment with these features themselves.

Second feature that I want to discuss for eRulemaking is that while we probably won't and shouldn't be getting rid of the traditional

comment letter any time soon, it does seem worthwhile to experiment with ways of guiding would-be commenters in writing effective comments. And this is something that I think might emerge as a theme for this panel. Having a text spot that says, you know, "comment" may sometimes invite just the similar kind of content that it invites everyone else on the internet.

But there might be a way to use the platform to encourage better comments by say drawing attention to assumptions, especially assumptions about costs. Finding the place where the agency specifically requests comments. They sometimes don't get comments back on those parts. This kind of automates what Advocacy has tried to do, what other groups have tried to do. Walking a business through the process of making comments as meaningful as possible. I will admit it is not immediately clear what the best interface for doing this might be. You can take it too far and end up with something that's essentially a survey. That's probably not what we want. But

there is also probably a good balance to be struck somewhere. And I think experimentation is probably the key to finding it.

So in some mass comments and comments with false names are primarily a difficulty from a small business perspective when they drown out the valid small business concerns or when commenters opt to sign on to a poor quality comment, when they might have been willing to write a high quality one. eRulemaking provides an opportunity, not a fantasy, but an opportunity for making that tradeoff less costly.

And finally, if the goal is to make sure that we're getting the information from the public, we should always be wary of discarding or ignoring content the public provides. Technology can be shifting through the pile less burdensome, but we never want to throw out the valid perspectives of small businesses or for that matter, anyone else. Thank you.

MR. SCHROEDER: Thank you, gentleman, again for coming. I really enjoyed the

discussion. The expertise that you bring is meaningful. And like Dominic said, it's not us speaking to the audience, it's bringing perspectives of those that are practitioners and researchers in the area.

This first panel has been focused on the impacts of rulemaking. We'll be following up with the second panel that's talking more about a public policy perspective. The topics intertwine a bit. Now that we've had all three speakers, we're going to be going through 15 minutes of question and answer. As Virginia starts to sort through the questions and prepare them, I'm going to ask a couple questions of my own.

So Executive Order 12866 requires agencies to assess costs and benefits for available regulatory alternatives. Oliver, I liked your lead-in with talking about why do we accept comments. So as a regulatory economist, you have a perspective on the analysis that goes into costs and benefits perhaps. And like Patrick, you have a role also for advocating for

the perspective of businesses. And Patrick, from your role, you advocate for smarter regulations and common sense legal reform.

So my question is how can public comment process best be applied to support the consideration of regulatory costs and benefits? So the roles the comments have of understanding the rule. And doing that analysis to understand what's the benefits and do they outweigh the costs. And then on the other side of that, how can regulators best get insight into common sense regulatory reform through the comment process?

MR. SHEROUSE: Sure. So I'll start with the portion of that question that was directed to me. So a lot of the work that I do as a regulatory economist is talking about economic analysis, which usually shows up in supporting document. And we're always trying to work with agencies to help them improve it. And the number one thing they say back to us is well, we don't have any data on that topic. We want you to fill something out. We don't have any

data. We don't have any information. And we always answer, well at least ask for comment. At least stick that in your economic analysis -- in your regulatory impact analysis. Say that we don't know this is a number that we have from some source. We know it's probably not the best thing that exists in the universe, but if you've got anything better, please let us know. And unfortunately, many of the times they don't get any comment on that topic.

So to the extent that eRulemaking can be used to help erect, like I said that kind of knowledge that's out there in the economy. And say even just how much does it cost to buy a piece of equipment? How much would it cost to add this to the job? Or if there were some kind of a delay, what kind of effect would that have on a particular business at some unit?

Those are things where agencies would love to have the right information. And they don't love having to guess. And they don't love having to sift through or back things out or just

make, you know, assumptions because they can't do anything else. So to the extent that comments can be directly very specifically at those points, I think it would both improve the rulemaking process because you can use that information and make better decisions. And the agencies would be happy because they would have less to talk to us about.

MR. HEDREN: Great. So I love the question. I have a lot of things come to mind on this. So let me start with the cost benefit question because I think if we could answer that -- I think OIRA in particular might be extremely happy to find that there is actually some solution to finding better quality analysis around this.

Often times the public I think is not actually that well positioned to evaluate on a technical detailed level, the kind of specifics of a cross benefit analysis. The range sometimes across benefit analysis can be pretty simple. And it identifies just a few factors. We think

this will be implemented by an HR professional. Their average hourly rate is -- It will take him about 30 minutes. And you look at that and you say actually probably anybody could engage that. No, I make more money than that. It's going to take me way longer. That can be helpful.

Sometimes they're incredibly complex. And when they are, I mean that type of expertise is not prevalent necessarily among the public. And I think where you're going to find this more in possibly an inner agency process behind the scenes. But otherwise with, you know, groups like ours, groups like SBA that have some ability to kind of crunch the numbers and sit with it and try to understand it. That said, I think using the tool to try and ask some critical questions about what is a comment letter and I think I kind of -- I really like that question and that point -- could be really valuable.

And I would just kind of throw out to the group, I'm guessing of most of the people that I see right now, maybe 90+ percent of you --

of us, have filed a comment letter. It's almost as natural as breathing for a lot of people in the regulatory space. And think to yourself how often you write a comment letter that begins with, "Dear Sir or Madam or To Whom It May Concern". And in our case, it would say The National Association of Manufacturers represents 14,000 businesses large and small -- We have killed so many trees with the formality of that comment letter without delivering anything useful to an agency.

So you have to get through the predicate. And then all the sudden you get to this, oh and we want you to do these five things and here's why. Okay, well that's a lot more valuable. Is the tool amenable to surveys when it matters? So the surveys won't always be appropriate, but there are many cases in which you can envision the public having incredibly relevant information in that process saying I am the type of person that's mentioned by the agency who will implement this. And I can tell you a

little bit about what that will be like. And a survey function could be a good way of doing that.

So asking critical questions about what a comment letter is supposed to be and what it is supposed to do, I think is a valuable kind of soul searching exercise for all of us who are kind of working with this 73 year old regulatory system that basically looks exactly like it did, except for the availability of these tools. So are we asking the questions about what goes into them?

On the second question, the common sense question, a few things come to mind. I don't know if I ever get an answer to this either. So I apologize to the public here at large.

A few things come to mind and jump out at me. One is agencies are not passive participants in this process. They're not kind of trapped with what they receive. They're ability to exercise some judgement here is pretty

great. I'm sure for those of us who file comment letters, since that's when we do our very best work and find that it's moved the agency less than inch and that's life. Sometimes that's how the process works.

How does a mass comment campaign factor into that? Well sometimes I think you can look to the normative point being made by as mass comment campaign. They're by definition self-interested. There is something that makes them go. Something that makes them catch on with the public. But they're usually pretty simple. Sometimes they're pretty high quality and often times they're not.

But they're usually some expression from the public, not necessarily getting to the cost benefit equation of 12866, but some of the other things in 12866 and 13563 and others that kind of govern this process that deal with why are we regulating this? And have we chosen an alternative that makes sense? And can we flag that as a public not being regulatory

sophisticates? And if that's the case, then I think that agencies can look at these campaigns for what they are what they represent. And draw some commonsense inferences from that.

MR. SCHROEDER: Thank you very much. I don't want to spend any more time on our prepared comments to make sure that we get to those questions from the audience and online. Thankfully we've been running ahead of schedule, so we still have a good solid 15 minutes. I'll go ahead and hand it off to Virginia for questions from the audience.

MS. HUTH: All right. Hey, we've gotten a couple great comments already. One I think is a very foundational question. I'm going to give it to Tobias. What percentage of rulemakings having fake comments? Do you know?

MR. SCHROEDER: That's an excellent question that I wish I knew the answer to in specifics because I don't. I know that some of the news outlets in their coverage did some of their own analysis. What we're going to do is

we're going to take the integrity of the rulemaking process very seriously and go through an intentional rigorous phased process. And the initial step of that is discovery. So we want to make sure that we're gathering all the available information that we can. And I emphasize "available" from the partner agencies that we interact with to get the statistics, so that we can independently validate what those numbers are. And identify what the risks are and respond in a prioritized way to those risks.

MS. HUTH: I'm getting so many great questions. Some of these I might have to spill over into the second panel, so know I'll be holding them. Related to the first question, what is the definition of a fake comment?

MR. SCHROEDER: Okay. Again here and I apologize to Dominic and his staff because I know that there was a working definition that was established. It's not official. And although I don't have it memorized, I know that it centers in on false attribution of identity. So sending

a comment and indicating that you are who you're not -- that you're somebody other than who you are.

MS. HUTH: Yeah.

MR. SCHROEDER: And that's not to say again, you know, I will emphasize that in taking this analysis of how we're going to address fake comments, bringing that information to our partner agencies and other decision makers on how they want to respond to it, that we're going to look at all potential aspects or areas of risks including that false attribution component of it.

MS. HUTH: Yeah. I'll add to that, there is a -- the system currently allows anonymous comments, so that would not be a fake comment. And that leads me into another related question which is why don't we require someone to authenticate their identity? Regulations.gov requires an API key, why? And why doesn't GSA require the same? Sorry, it's for Tobias again. Sorry. I'll go to you guys quick.

MR. SCHROEDER: I apologize if I don't

remember all three parts of the three part question. That first part of allowing anonymity, rather than doing all the speaking myself, I would like to hand that off to our speakers to address that from your perspective.

MS. HOUTH: Actually, the anonymous wasn't the question. The question was why wouldn't we require someone to authenticate themselves? And actually I think that is really for the panel. I think that's really a public policy question.

MR. SCHROEDER: Sure.

MS. HOUTH: What are the pros and cons of asking someone to authenticate themselves? So let me offer that to you guys.

MR. HEDREN: If you don't mind, I have an example that jumps to mind.

MR. SCHROEDER: Yeah, please.

MR. HEDREN: This is funny. So this agency is sort off plan so to speak for Regulations.gov. But for better or for worse, I frequently comment at the Postal Regulatory

Commission on issues of postal reform. And the PRC has a system of validation for commenters. So there actually are examples of this throughout there. And just as a kind of quick and yet, it changes the relationship with the regulator. It sort of -- your first comment of three types of things and then you send in a form and they know who you are.

And I think it's because in this case, the universe of commenters is so small compared to what you might see at the FCC or Treasury or wherever, that it can kind of make sense. But it is a barrier and it prevents, I think, many people from engaging on a subject that they might not be sophisticated on necessarily in the kind of ways of postal law. For that matter, I'm not. But they may have a very valid point to make by weighing in.

MR. WIJESINGHE: I was going to add, you know, it's a very personal choice on, you know, whether you choose to reveal your identity or not. And there may be some very valid reasons

for that. Certainly I think there is you know, a notion of mass comments that have no attribution. I think, you know, my personal opinion about that is you're kind of essentially losing the mark there with that one just because, you know, the mass comments supporting a particular position, the whole point is if you can assign and align multiple points of view to that, that adds some weight in terms of how important that might be to a certain community. But doing mass comments with no attribution is a petition with only your name copied in 10,000 times. So I think there's some boundaries around when anonymization may or may not be kind of useful. But as I said, it seems like everyone will have their own opinions on this.

MR. SHEROUSE: Yeah. And I so I had mentioned that it's easy to imagine a case where putting on a false or anonymous comment might make sense, we don't really know empirically how often those comments are the sort that are good and people just don't want to reveal their

identify. Like I can imagine, but I don't know empirically how often that happens.

So I think as we get a chance to analyze that more, we can maybe arrive at a point later on where we can say how likely these things are relative to each other. So I'm very cautious on foreclosing on things that are possible right now, not knowing relative likelihood. So that drives a lot of my thinking on this particular topic.

MR. SCHROEDER: Okay. Patrick thank you for mentioning that Regulations.gov is not the only game in town. It is very much the most widely used among federal agencies as an electronic notice and comment system. So the eGovernment Act of 2002 did require electronic dockets and an electronic means for receiving comments. It did not require the use of a shared service. However in that same year through the eGovernment Act and OMB memo, there was an effort to try to consolidate news shared services.

And what I can say for Regulations.gov

typically a good rule of thumb is to say that if we aren't requiring identification authentications, it's because that's what our partner agencies have requested in the functionality. We provide a federal shared IT service for those agencies that we do serve.

I can further say that it really depends on agency to agency perspective. The current Regulations.gov that's been in place for many years provides a significant amount of flexibility to agencies to choose whether they accept comments anonymously or whether they choose to ask for your name or other information. Even in those cases where they do ask for it, we're not validating it. We're just providing the fields and we may require that you put something in there. But you could say that you're Mickey Mouse and not who you actually say that you are.

Identification and authentication is an entirely different thing. That's where you're using services perhaps like LexisNexis or others,

you know, where you can verify somebody's identity. And then once they establish User ID, passwords, you know, authenticate them each time. And I think as referenced here, I can't speak for the agencies, but there is that push and play of how are we protecting against false attribution of identify on the one hand? You know, and then on the other hand, how are we impeding open access and the desire to maximize public participation?

MS. HUTH: Thank you. Here's another related question. So I understand comments aren't votes, they convey information. If so, why do the fake comments matter? If it's just info, why do we care about fake comments really?

MR. HEDREN: Sure. Okay, I love that question. I think there's a lot in there to unpack. And there's sort of a question of well should we? Right? If as -- I'm trying to remember who originally said this -- but if rules are the handbook to how a statute works, then the relevant questions are about why in fact and how

the agency should fill in the gaps. So does it matter? I'm not sure.

I think there is some value for people from the perspective of getting and soliciting engagement from the public to bring them a little bit closer to their government by pulling them in through a system that fits their needs. To comment on something and have their voice heard. I'm not sure that we have anything smarter to say than that really.

MR. WIJESINGHE: So I make the distinction here in terms of where that comment originates. So if it's coming from a machine and a bot, this is the opinion of a non-carbon life form that's trying to skew public opinion. And it does matter in that context. For that example with the Idaho Medicaid case, the 1,000+ bot generated deep fakes outnumbered the citizen comments. And basically they were very well structured. They had clear arguments. They mapped to the rule. And if they weren't withdrawn, you know, that may have shifted public

policy in something really important. So there's a need here to disambiguate perhaps the mass comments that originate from attribution to individuals. You know, it's very real. And those that basically are generated as pure identification factors by machines that have really no other objective than to disrupt society.

(Off-mic comment.)

MR. WIJESINGHE: So the matter of law, I think will have to go to someone else.

MS. HUTH: Next panel.

MR. SCHROEDER: Virginia, just to give you, we're right about five minutes. So maybe the last question.

MS. HUTH: Yeah, we've got about five minutes. Let me read another question here. There's so many here. So a lot of people say engage the public for comments and provide templates for suggested language. This makes it easier for people to participate. And the fact that the letters are similar or even identical,

that doesn't mean the views aren't relevant. They aren't actually for the individuals. What are your thoughts? I mean does the fact that people are involved in mass comments, does that mean that their votes don't count as much as if they sent the right letter? Are they disenfranchised in some way? Is this a concern at all?

MR. SHEROUSE: Yeah, I'll jump on this one. So I mean I think part of the question was do their votes not count? We always want to reemphasize that it's not a vote. It really depends, I think, on the template here. Right? Because what we need is, we being society, is for information the regulators don't have to get to that. So they can work the best. That's how I'm framing it. Folks might want to take a different view from different perspectives.

But if the template has all the useful bits of information, then getting it to the agency several times with different personality and flavor in the gaps, that's not that much more

helpful. If the template helps someone say something unique about their business that they are in a position to know that other people are not in a position to know, then that is a wholly good thing.

We should encourage it. And that will help make the regulatory record better. It will help make decision making better because then you're getting what's important to the agency. And that's kind of why I think each of us has to focus a little bit on saying, it would be wonderful if we can figure out a way that a platform can help do that. Although it's easy to say that and harder to figure out exactly what it looks like.

So the fact that some language is not much --

MS. HUTH: All right, we have time for one last question. There are a few others, but I'll fit them into the next panel if I can. This is for Tobias. So you know, this is going to be costly. What's the timing for incorporating any

technology into manage fake comments? What's the timing?

MR. SCHROEDER: The answer of specific timing, what we're going to deliver is going to be driven by the process of the analysis. So again, I want to emphasize that my role is to deliver a good quality shared IT service. And developing these IT services or modernizing them, you go through a process. And that includes a phase of discovery, whether you're gathering what's the problem that we're going to solve? What are the most valuable services? What are the highest risks? And then you weigh that against what are the technical solutions? How much do they cost? How hard are they to deliver? And you integrate this variety of criteria into a set of information for decision makers.

And ultimately -- again I serve a set of partner agencies with oversight from OMB and present this information to them to act on. I can say that from a practical perspective, we want to first focus in on service continuity to

make sure that the existing important services remain in place as parts of our IT infrastructure get older. And think about how quickly we can move to the next thing. How to improve our existing services and how to look at a potential perspective of what our future services might look like.

Another priority in addition to that initial service continuity question is what are the risk-based decisions that we need to make in response to mass and fake comments? And what among those criteria, the easiest solutions that we might be able to put out there that at least address and mitigate some of the risks as quickly as possible? We don't have specific timelines. I can say that as quickly as possible. And we do have a fixed budget and we'll move forward with the analysis with urgency and a sense of a perspective on the importance of the perception and the reality of the integrity of the rulemaking process.

MR. SCHROEDER: All right, that's on

the dot. Gentleman, thank you again.

All right, Panel 2, as I introduce you again, you can also come up to the stage. Our second panel's going to focus more on the policy perspective of mass and fake comments. So I'd like to introduce Reeve Bull, the Research Director of the Administrative Conference of the U.S. Dr. Steven Balla, Associate Professor at George Washington University. And I apologize again to Oliver for not appropriately saying George Mason University in your case. And Michael Fitzpatrick, Head of Global Regulatory Affairs at Google.

So Reeve Bull is the Research Director of the Administrative Conference of the U.S. He's worked on projects related to international regulatory cooperation, the use of science by administrative agencies, presidential review of agency rulemaking, cost benefit analysis, government contractor ethics and eRulemaking among other things. He's an elected member of an American Law Institute. He sits on the counsel

of the American Bar Association Administrative Law and Regulatory Practice section. And is also the Vice Chair of the Sections Rulemaking Committee.

Dr. Balla is Associate Professor of Political Science, Public Policy and Public Administration and International Affairs. And a Senior Scholar at the George Washington Regulatory Study Center. He researches government consultation and public participation in policy making in the United States and China.

And I'll quickly give the bio for -- This wasn't cued up in the best order. Michael Fitzpatrick's the head of Global Regulatory Affairs at Google. Previously Michael was Head of Regulatory Advocacy NGE for seven years. And before that, he served as Associate Administrator of OIRA in the Obama Administration as a Senior Advisor to the OIRA Administrator and the Clinton Administration. He's a Senior Fellow with ACUS and a Fellow of both American Law Institute and National Association of Public Administration.

So I'll hand it off to Dr. Balla for his remarks.

MR. BALLA: Over the last few years, we've been, with a bunch of colleagues at George Washington University, working on a project on mass comment campaigns and agency rulemaking. And I want to spend a few minutes sharing what we've been up to, what we've found. And what we think some of the broader implications of the research are, but for the larger interests we're discussing today.

So just to review the bidding, what are we talking about with mass comment campaigns? These are collections of identical, near duplicate comments -- thank you -- that are sponsored. How do they appear in the docket? They're sponsored by an organization. We've heard from several organizations that are active in this space. And who's submitting these comments? It's group members. It's supporters of the group's mission.

Now our focus in the research project

is on three main questions. So first, who sponsors mass comment campaigns? So who are the organizations that are doing it generally speaking? Secondly, what do these mass comment campaigns say? What is their content? And then finally, what do agencies do with mass comment campaigns? So how do they handle them once they come into their dockets?

So our focus, next slide, is on the EPA for a couple of reasons. One, EPA is a great place to start for looking at this phenomenon because the agency's an active rulemaking agency with stakeholders on all sides of the issues that it regulates on. More practically speaking, the agency does, to the best of our knowledge, you know, relative to other agencies, an interesting way of recording these mass comment campaigns in a transparent and a systematic way that's easily accessible and understandable.

So for example, when a mass comment campaign comes into the EPA -- and by the way, we're taking the EPA's judgement at face value

here -- So what the EPA says is a mass comment campaign for us as researchers is a mass comment campaign. Sidebar, we do mess around with that a little bit in the analysis, but that's a story for another day. When the mass comment campaign comes in, the agency creates a record in Regulations.gov.

What's that record contain? Up at the top of the screen, the mass comment campaign sponsor if the agency is able to figure that out is identified. In the one that we're looking at here, it's the Natural Resources Defense Council. On the right-hand side, the agency notes how many of these identical and near duplicate comments there are in the docket. So in this case, it's over 100,000 in the campaign that we're looking at. And the finally on the lower left-hand side, the agency presents one illustrative comment in that campaign. So here it's as a PDF attachment. But note what that means is there aren't 100,000+ records created in Regulations.gov, there's one record created that then references the number.

Gives a flavor of the content. And if it's known, talks about who the organization -- who sponsored the campaign.

So now if we look at who the sponsors are, to get that first question. We're not always able to -- The EPA is not always able to identify the sponsoring organization. So that was a point that was raised on the previous panel about anonymous mass comment campaigns versus those that are attributable to a group. And we can talk about that in the Q&A if anybody is interested about the differences across these two types.

We've divided simply two broad classes of stakeholders, if you will. At the top -- that's not a great name -- Advocates of Intrinsic Regulations. What we mean by that is environmental advocacy groups like the NRDC, Labor Unions, general progressive type groups organizing for actions, that set broadly speaking of groups.

We might expect that as mass

membership organizations, these are going to be organizations that are particularly active in this space. And that's certainly true. But if you look at the bottom half of the table, regulated entity. So in the case of the EPA, it's mainly the agriculture industry, the Energy sector. They're actually players in this space as well. And again, Patrick suggested that NAMs active in mass comment campaigning. There is a lot of that in the sectors that the EPA is usually interacting with in the notice and comment process.

If we look at those two numbers, 542 versus 198, that's about 75/25 breakdown in terms of percentages. So certainly the mass membership groups, sort of the traditional advocacy groups if you will, are more active in this space. But there is mass comment campaigning happening across a variety of stakeholders. And we were a bit surprised to see how much activity there was in fact among what we're calling here "regulated entities." We thought that would be a much rarer

occasion.

Now what do they say? So what we're going to just depose here on the screen in front of us, if we go to the next slide is two extreme examples of mass comment campaigns. On the left-hand side, you are looking at a mass comment campaign in its entirety. The text of the campaign in its entirety. Twelve words to say thumbs up to the clean power plant. So that campaign, that was initiated by a state level environmental group.

On the right-hand side, this is the other extreme. This is from a national agriculture organization, this is a very small snippet of a much longer mass comment campaign. So I want to emphasize both those points. Because it's a very detailed campaign -- a very detailed comment that was submitted by many, many, many different individual commenters -- individuals or organizations. In this little piece that we're looking at, you can see there's data, there's analysis. This is a well-reasoned,

well researched, well sourced mass comment campaign. So those do exist.

And so I want to emphasize that there really is variety in the space of what we call a mass comment campaign. Now certainly if we -- where's the center of gravity? It's more toward the left-hand side of the screen. That's for sure in terms of raw numbers. But those mere statements of directional preference and nothing else in terms of argument or evidence. But we do see reasoning and data on occasion.

Finally third question, how do agencies handle mass comment campaigns? So we looked here at a number of different sources; one of which I'll show you. Which is the response to comment documents that the EPA will put out, along with its final regulation. And a typical template for these documents which can be hundreds or thousands pages long is to exert one comment or a series of comments. And then respond to that particular argument or piece of evidence that's being raised.

And what we found is when we look across mass comment campaigns versus your, if you'll call it, traditional stand-alone comments that we historically think of in the notice and comment process, what the EPA typically does is with a mass comment campaign that makes like a quick directional statement. We love your rule, we hate your rule, and nothing else, that tends to get mentioned almost every time in the docket. But the agency's response, it's usually mentioned one time. The agency responds quickly and it moves on.

What about the more substantive comments, if you will, that have reasoning and evidence? You'll see the agency repeatedly going back to those comments, addressing each piece of evidence or substantive point individually. So we do see the agency able to deal with mass comment campaigns in what we think might be an appropriate manner. Mention that they were received. React to them quickly. And move on and spend much more time with the other comments

on the docket. I'll come back to that in a second.

Last slide, our view of mass comment campaigns if I could sum up, it is indeed a form of participation that's exercised by a variety of stakeholders. So it's not just the mass membership groups per se that we might traditionally think of. Again most of the time, statements of directional preference, for or against the rule, nothing else. But occasionally -- not rarely, occasionally data argumentation. And then finally at least in the context of the EPA, we see the agency readily identifying the campaigns, cataloguing them in a systematic and you know, accessible way in Regulations.gov. And then responding to them in a way that we think is reflective of their content.

So if we get to the last point at the bottom of the slide. If we step back from the empirical findings, we don't see mass comment campaigns as an abuse of the rulemaking process. We think they're a legitimate form of expression

in this particular space.

That said, we don't think mass comment campaigns have democratized the rulemaking process. There was so hope of that a decade+ ago. Nor do we think that agencies have been inundated with notice and span that has ground their decision making processes to a halt. If anything, we see these campaigns as a phenomenon that are managed within the -- you know, the technology hasn't changed the process, rather the process has adapted to the technology. And so that's why we don't see these at least -- most of the time and it's currently constituted as an abuse of the rulemaking process. Thank you.

MR. SCHROEDER: I'm going to make one quick clarification to Dr. Balla's remarks and it doesn't change substantively what he said. I just want to emphasize that regardless of whether it's a mass mail campaign or an individual very unique comment, every individual comment that comes into Regulations.gov does get saved as a record.

Once an agency uses some of our tools like the duplication to identify that they're mass mail campaigns and chooses to have one representative comment reflect this larger -- that's what they by intention are publically posting to Regulations.gov for people to see. But I do want to provide assurance if as part of a mass mail campaign, you provided a little bit of uniqueness to a form letter, all those original comments are saved and are seen by the agencies.

And next I'll go to Reeve Bull.

MR. BULL: Wonderful. So let me first say thank you to GSA and to Tobias and Virginia for putting on this excellent forum on a very important topic. And for inviting me to participate, along with my distinguished co-panelists.

So what I'd like to do in my remarks is first look at a very fundamental question, which is what is the purpose of notice and comment? What are the fundamental goals that the

agency and the APA are trying to accomplish by creating this mechanism for public participation? And I think this is important because I think the reasons behind notice and comment really shape whether or not mass and fraudulent comment campaigns are a problem. And if so, how the agency should best go about responding to these.

And then what I'd like to do then is look at mass and fraudulent comments individually. Because I think in light of those policies, each of them raise sort of distinct issues. And what the optimal response looks like, I think varies in each case.

So first with respect to the underlying purposes of notice and comment. So I think at the simplest level, you can basically say that when somebody files a comment with an agency, the comments sort of fall into two broad categories. I mean there's of course overlap between the two. But the first type of comment are those expressing fact. Providing data to the agency either supporting the position that it

wants to take or opposing the position that it wants to take. And trying to influence the agency's decision making accordingly.

The second broad type of category are those expressing opinions. Now obviously there's extensive overlap between the two. Pretty much every comment is going to express an opinion one way or the other. But as Steve's data shows, sometimes a comment is nothing but an opinion. It's I support this policy or I don't support the policy. Or as other times, it's accompanied by data that the agency can then consider.

So I think that this is relevant first with respect to what the underlying law is. So the underlying law is the APA. And the law is very, very clear that with respect to the fact, with respect to data, the agency is legally required to take that into account. The exact language of the ADA says that the agency is required to consider the relevant matter presented. And if a commenter provides data and the agency ignores that, that the rule can be

challenged on judicial review and potentially set aside if the agency failed to take that data into account.

With respect to opinion though, the law is much less clear. Indeed it's not clear whether the agency has to take opinion into account or conversely whether the agency is even permitted to take opinion into account. So to consider an extreme example, you know, what if an agency received 100 comments; 55 in favor, 45 against. And the agency said well okay, you know the preferred outcome is in favor. So we're adopting the rule for that reason alone. I think it's probably fair to say that a court would strike that rule down on judicial review as arbitrary and capricious unless the agency had additional data -- additional information justifying the decision that it made.

So the law is pretty clear. The fact has to be taken into account. The opinion maybe or maybe not. I think fact/opinion distinction is also very relevant with respect to how the

process is perceived. And what I think is interesting is that it's perceived differently by the agencies on the one hand or the government and by perhaps the broader public on the other hand. So the agency, I think to their credit -- and you heard this again and again in the first panel -- I think have been very, very consistent in saying the rulemaking process is not a plebiscite. It's not a vote. We're not tabulating the number of comments in favor or against.

Now of course there have been instances where like in the Waters of the United States rule a few years ago, I think it was EPA that pointed out that a certain percentage favored the policy. I think this came up in Net Neutrality recently as well. But generally it only comes up if the comments point overwhelmingly, you know, in one direction or the other.

On the part of the public though, I think the perception is quite a bit different.

And I think this was particularly shown in the reaction to the Net Neutrality rule where the comments, at least in one iteration sort of overwhelmingly point it in one direction. And I think that people really considered it problematic from their perspective that the agency might take a position that is different from what the vast majority of commenters might have preferred.

And with respect to that latter aspect -- the democratic aspect if you will -- that's where I think a lot of the problems potentially start to arise in the mass commentary and in the fraudulent comment area. So let me move to that and address each of those individually.

So first with respect to mass comments, now I know this is sort of admittedly, sort of an esoteric topic. And this is probably the only thing I'll say today that has even a --

(Off-mic comment.)

MR. BULL: -- I don't think it's ever legitimate in a mass comment campaign for the

agency to tabulate the number of comments received and say we got this number of this percentage in favor or against. Even if the comments are 99 percent in one direction or the other. I think that the agency should certainly consider mass comments. They should certainly consider the relevant information -- the facts contained in those comments. But I don't think that the overall number or percentage should ever matter.

So why do I think that? Well first of all, these comments are generally -- I think this is pretty clear in the social science literature going to be wildly unrepresentative of the public opinion in a lot of cases. People who are motivated to comment generally have strongly held views in one direction or the other. So you're not getting a true gauge of public opinion when you're tabulating comments.

Secondly, and this is where I think the mass comment phenomenon ties in with the fraudulent comment phenomenon. So you know,

mentioning the FCC Net Neutrality rule, you saw a huge effort on both sides to engage in a fraudulent comment campaign. There was misappropriation by identity. And I think the whole reason that, that happened presumably -- and it wouldn't have happened if people didn't think the overall number of comments matters. So I think it creates an incentive problem when the agencies are, you know, posting the percentage of comments received. And indeed it creates a real risk of fraudulent comment campaigns.

Now this is not to say that the public opinion isn't relevant. There are probably better ways that the agency could go about ascertaining public opinion; an opinion poll perhaps. Or we at the Administrative Conference have recently issued recommendations on early public input that I think would give the agency a truer sense of what the public sentiment is.

So perhaps you could just convene some sort of Advisory Committee that includes a demographically representative set of citizens.

We have a recommendation on negotiated rulemaking and sort of things short of negotiated rulemaking that might look sort of like that. You could have some sort of listening session where you invite members of the public in to express their views. I think either of those or any of those would give you a truer sense of what the true public opinion actually is.

Now with respect to fraudulent comments -- and this actually interestingly came up in one of the questions in the last panel. So if we're looking at it from a factual perspective, do fraudulent comments really matter? And I think the answer is maybe. If the comment, even if it is a fraudulent comment, has factual information in it that's relevant and that information is verifiable in it, the agency should take it into account even if the person filing the comment is not the same person who signs his name at the bottom of it.

Interestingly, I think you see the same thing with bot comments. That if an AI

program could actually generate a comment that's relevant, that contains useful information, in theory yes, the agency should take that into account.

However, and this is why I said maybe, there are certainly instances where the identity of the person may matter. So if it's a trade group or some other entity that has expertise and there's a misrepresentation as to who's filing it, then I think the identity does matter. Or if a person reports to have situational knowledge, then I think the identity matters.

So there are risks certainly with respect to fraudulent comments, even in the factual arena. In the opinion arena, I think that again because it's not a vote, it's you know, perhaps less of an issue. However, it can affect the perceived integrity of the process if you have a fraudulent comment campaign. And that's certainly something relevant the agency should take into account.

The final thing I'll mention is that

I've looked at this solely from the perspective of the policy making process itself. Obviously there are any number of other legal and other issues associated with fraudulent comments. Most important, identity theft which is probably a federal crime if a person is filing information with the government and misrepresenting his or her identity. And there are other issues related to copyright and privacy and indecency and any other number of issues arising in both mass and fraudulent comments area. I've not looked at those, but those are obviously important legal issues that agencies need to grapple with. Thank you.

MR. SCHROEDER: Okay, next we'll move on Michael Fitzpatrick from Google.

MR. FITZPATRICK: Thank you, Tobias. And I did actually bring a tie with me. It's sitting in my bag in the back, but I thought I would play to type and be the only panelist who's not wearing a tie. I'm not wearing blue jeans, which is where I did draw the respect line here.

This is like I tuxedo where I work. But I have a lot of these left over from the White House NGE. So listen, I'm really glad to be here today. And thank GSA for putting on such an important symposium on an important issue.

So let me start with maybe a more concerned perspective. And again, I will like Reeve, emphasize that I am most definitely here representing my own views and not those of my corporate boss. But I am quite concerned about the proliferation of fake comments. I think mass comments is a whole other matter. And I think it's a matter substantially of agency process management and you know, what level of attention they should be given.

But the question of fake comments goes in my view to the heart of our democratic process and the integrity that society views our democratic process -- our government institutions as having. And you could say that perception is reality. Whether or not an agency is able to deal with fake comments and whether or not they

actually impact the substantive decision made, I think is one question. And I have actually faith that agencies are going to be able to manage this quite well.

But I think the perception problem is huge. And we live in a time where there is decreasing trust in all of our institutions, not the least of which are government institutions. And I think the last thing we need is a common view that essentially the entire rulemaking process is being gamed by a variety of machines and shadowy players.

And in some instances, that's true at a substantial scale. So my view is it's only going to get worse. Mark my words. What we see now will be some digit X worse and more sophisticated and more prolific in five years and ten years. And that to do nothing is to sort of concede that space. And to fight back will at least slow the advance of something that could become I think even more damaging.

So the question then is what? And to

borrow a phrase from Dustin Hoffman in the Graduate when he said "plastics", I'm going to say "machine learning". Right? So I'm here to talk a little bit about the technology solutions that are available to agencies, many of which they already know about, folks. Okay? So they are hip to these and they're exploring these.

I'm also here to say that while I'm going to reference some tools and solutions that are available by Google -- or from Google, I am here also to say that there are many worthy competitors and there are many variations on these same tools that are available from any number of technology companies. But I'm going to speak to a few that I'm most familiar with.

And these tools are available to mitigate against a number of bad actions. Right? So there are tools that can deal with spam and toxic comments. Publishers are very concerned with this -- toxic comments. Right? How it impacts comment rooms or comment discussions that are ongoing on their websites. And there are

tools that have looked at millions of comments and then sent -- it goes out to tens of millions of potential commenters and asked them, what types of comments shut down discussion? Right? And it's extraordinary the learning that you can get from that. And publishers for instance, can then key that into their comment discussions when they try to deal with complex questions of content moderation. Right?

There are also tools that can check URLs against lists of millions of known unsafe sites including sites engaged in phishing, deceptive sites that may have malware that could infiltrate an agency's systems. And they're quite, quite effective in fighting back against those types of risks.

I'm going to focus though on the question of bot-driven comments, which I think is driving a substantial proportion of the activity that's of concern to agencies and to the regulatory process. And the good news I think is that type of activity is more easily challenged

by machine learning tools than are human-submitted comments that may be fake. Right? They may be what we call synthetic identities. So where people are misappropriating an actual identity or they may be utterly fake identities where something's being submitted either anonymously or under a -- using a fake person. Okay?

If it's bot-driven, there are real tools to fight back. And I'm going to talk about one in particular. And that is reCAPTCHA. And a lot of you are familiar with this. I was joking with some our engineers that I've had nightmares about clicking on photos of school busses and bridges. You're all familiar to that. It really can get deep, deep into the gerbil brain.

But the good news is, imagine that where each time a -- that's very effective by the way in fighting back against bots. Imagine if every time a comment was submitted, that mechanism of protection was instigated. That

adds what we call a lot of friction to the process. And this is the great balance for agencies and for the rulemaking process. Right? They want to protect -- we want to protect against bad actors, but we don't want to add a level of friction that deters democratic participation in the process. In particularly, participation by people with fewer resources, right, and less sophistication. The big boys and girls, the NAMs, the Googles, we know how to do this. Right? And we're going to have the resources to do it. But it's going to be harder for individual actors, small businesses, et cetera.

There are versions of reCAPTCHA now that are quite sophisticated. And this is how -- this is how they work. They're invisible. So what happens is the enterprise and Google for instance will undertake to screen every single interaction with the website using an individual token for that particular interaction. Everybody is treated as a first time user.

There are sophisticated collections of data around -- not personal data -- data around how the submission is being made. Click speeds. Click patterns. The nature of the comment that's actually being filed. And using machine learning, you can draw a risk score between one and ten that is predictive of whether or not that is a suspect bot-driven submission. Zero being it is with 100 percent certainty or almost 100 percent certainty, bot-driven and ten, human driven.

The agency can then set a filter -- a triggering filter where it feels is appropriate. Okay? They can set the sensitivity. And they can allow through comments without challenge up to a certain threat level. And after that, there will be some kind of triggering challenge. It can be two fact for authentication. It can be a phone call. It could be the dreaded reCAPTCHA widget. Right? But that will substantially shut down the bot activity. And will add very little to no friction for legitimate users.

You could also segregate any red flagged submissions and put them in a separate category to be dealt with later. And that's a decision that can be made by the agency. The machine learning tool will continue to learn over time and perfect its precision so that what you end up doing at the end of the day is reducing false positives, which is what you want to do. You don't want to restrict the submission of legitimate comments by legitimate people and increase the accuracy around real positives.

Let me finish with one last thought about human-driven, non-bot driven fake comments. These are without a doubt more difficult to mitigate. And I think there are some serious policy discussions and balancing that need to occur at the agency level around these.

There is likely to be some level of friction that is involved with trying to stop that activity. Because there will probably be some kind of trigger or challenge, which will increase the costs -- the transaction cost of the

click farm for instance in some country you can identify outside of the United States that's generating these sufficient. But it can -- it can mitigate the risk.

Preventing bulk uploads of comments perhaps is another way of avoiding the large misappropriation of identities. And then the large submission from a human-based perspective of comments that are hard to challenge with machine learning tools. As is the IP address detection and verification. If you're noticing that a large number of comments are coming from a single IP address, then you can take additional mitigating steps to address those comments.

So I just wanted to lay out on the table the hopeful thought that there are -- from many different companies, many different vendors, opportunities for government to partner with the technology sector to come up with technology solutions to fight back against this. That reduced friction that preserve democratic engagement with government, but really do try to

push the bad actors out of the process. Thanks so much.

MR. SCHROEDER: And we are committed to robust market research to explore all those opportunities. Thank you very much.

So with that said, I'd say that we have about 16 minutes for question and answer. And we can go straight into it if you're ready, Virginia.

MS. HUTH: I've got to move over here, so I don't make feedback with that big speaker, they told me. All right, so many good questions. I'm trying to consolidate some. We'll try to see if we can get through these quickly.

All right, I've got a question for Reeve. So many of the people affected by government regulations; basic people, workers, consumers, tenant, they don't necessarily have the resources to come in with a lot of the data and the arguments. Don't their opinions, considering this still count? Shouldn't they still be on a level playing field even if they

don't have all the data? What are your thoughts?

MR. BULL: Sure. So it's an excellent question. And I think probably the most profound objection to the position that I've taken. So you know, I would say first that certainly I think that the public opinion is relevant. You know, that's certainly one of the underlying purposes of notice and comment. And of the participatory rulemaking process more generally.

So my perspective is that there are -- if the agency wants to determine what the public opinion is, I think there are much more sophisticated ways of gong about doing that than tabulating the number of comments. I think when you tabulate the comments, you tend to get that's most strongly held and often outlier views on both sides. In something like an opinion poll or a listening session, would actually be a much more effective way of determining public opinion.

And that's not to say though that

people would be foreclosed from submitting comments. And indeed, you know, there are instances where members of the public might have situational knowledge that's of relevance. So I'm thinking of an example. There's a rule that I think DOT is currently seeking comment on related to service animals and emotional support animals on airplanes. A very controversial topic. And you know, almost everybody flies with some degree of frequency. And that's something where if you had, you know, a bad experience on the airplane involving something like this, your knowledge would be directly relevant to the rule.

So there certainly are instances, I think, where the barrier to entry is relatively low. And where comments from members of the public, I think can have direct relevance to what the agency is doing. But if the comment merely consists of I agree or I disagree, that's where I think you'd get a much better sense of the true public opinion by taking an approach other than simply tabulating comments to determine that.

MS. HUTH: All right. While machine learning has great potential to limit the bot-driven comments, couldn't that also prevent legitimate mass comments on the part of advocacy organizations? Combining questions, could they have their own EPI? Could they have their own widget? What are your thoughts, anybody?

MR. FITZPATRICK: Virginia, can you repeat that? I couldn't hear it.

MS. HUTH: So what I heard you say is we could use machine learning and CAPTCHA tools to sort of screen the mass comment campaigns. But wouldn't that have some impact on legitimate mass comment campaigns? You know, advocacy organizations who are commenting with their stakeholders approval.

MR. FITZPATRICK: Sure. So there's a couple dimensions to that answer. First of all, the technologies that I described are principally directed at bot-driven submissions. Okay? So they are not intended to, nor do I think they would be used by -- and again the question of how

they're used is really going to be up to the agency in how they decide to calibrate this and use it and for what purpose. But it's not intended to stop legitimate mass comments. Many of which may be -- I'm assuming are going to be submitted by legitimate interest groups; business or public interests. Not by bots, not by foreign-based click farms, but by actual submissions into the record.

The question of false positives is a real one and a very important one. That's why I wanted to highlight it. This is the balance, right, between -- it's the cost benefit balance between screening out large numbers of fraudulent comments that are in a sense tainting the system at the risk of occasionally screening out a legitimate comment versus simply allowing it to happen. Now you could just do nothing in which I posit that this is only going to get worse by orders of magnitude. And may at some point overwhelm the system.

Or you could do sort of non-technology

based solutions, which in my view are going to be much more obtuse. Right? Real restrictions that the agency has within their own tool kit to really screen submissions and create some kinds of checks. I think the key to technology solutions is that they really are able to be precise and calibrated. And that you can reduce very substantially the friction for legitimate users and the incidents of false positives.

So I did end with one additional thought. An agency, first of all, can iterate into this. And there will be learnings along the way. You can pilot it. You can try it out and move into it. Second, you can be much more cautious about setting the filter level, right, the risk level. The agency has great control over that. Ten different levels of risk filtering.

But also maybe you don't entirely prevent even submissions that are flagged as almost 100 percent bot-driven. Maybe you segregate the flagged into a separate pool that

you then do much further investigation on, okay, as opposed to just stopping them from being submitted. So I think there are ways to address this legitimate concern.

MS. HUTH: Thanks. So we know that stealing someone's identity to file a fake comment is against the law. What do you think the government should do about that?

MR. BALLA: This is best answered by an administrative lawyer, I would say, not a social scientist. But I'll just -- I'll just wildly speculate on this. In that I think there's two perspectives that we can look at this from. And I think Reeve you --

MR. BULL: You'd be a good lawyer.

MR. BALLA: Administrative lawyer in training. And I think this is relevant to what Reeve earlier said in that you can think of fake comments from an agency perspective versus the perspective of the submitter. And from an agency perspective, you might not be all that concerned about the identity of the commenter itself.

Many agencies, as has already been mentioned, accept anonymous comments. And so from that perspective, you might not be that concerned. But from the perspective of the person who's identity has been stolen, that's a completely different story. There can be a lot of emotional -- you know, emotional discord associated with that. People finding out that dead relatives have submitted a comment on Net Neutrality. This has happened. And so from that point of view, it's certainly problematic.

And so I think what we need is that 360 degree view of where in this process, you know, from the user to the receiver, where it might be problematic. And where it might not be as immediately threatening. And that's where we need to emphasize -- you know, put our -- you know, put the emphasis on legal thinking as I think more on the user side than the agency side. Although Mike might have different thoughts about this.

(Off-mic comment.)

MR. BALLA: Or Reeve.

MR. BULL: Wonderful. So no, that's actually an excellent, I think, legal analysis of the problem. I don't really have too much to add. I think Steve pegs it exactly. I mean I think -- you know, the problem is there's some real countervailing considerations here. On the one hand, you know, as Steve points out, it's perfectly legitimate. And agencies have always permitted people to file anonymous comments or even to file pseudonymous comments. You can say George Washington or Mickey Mouse or whatever, you know, as the name when you're submitting a comment.

And in addition, there's certainly some concern about chilling participation in the process. If it's too aggressive, the agency says if you will file a comment and if there's anything inaccurate in that comment, then you would be subject to criminal prosecution. That might deter people from participating in the process.

So I think, you know, those are really the considerations on one side. But I think Steve also well articulates the considerations on the other side. If you're having your identity stolen, that's a real problem. And that's where I think it really has to come down to the nature of the comment campaign. And probably ultimately prosecutorial discretion of the part of DOJ as to what's worth prosecuting and what isn't.

And I think if it's a really, you know, significant effort to thwart the overall process and to file, you know, thousands or millions of fake comments and you're systematically misappropriating people's identities, then yes I think prosecution may be appropriate in that case. But if it's a more minor instance then, you know, perhaps not. I think it really sort of depends on the nature of the campaign itself.

MS. HUTH: All right. Is it the job of government agencies to define for citizens what a good comment is? What is a good comment?

And what do you think a good comment is?

MR. FITZPATRICK: I think a good comment is a factual comment that the agency finds compelling even if it disagrees with them is my view. I mean I think unfortunately agencies are left with the job of defining what a good comment is and they'll be checked in the courts, but that's okay. They do the job really well and they see a lot of comments.

I think the theme that you have heard through all of this is we should -- the system is set up for agencies to consider factually accurate, substantive comments, even if they're in short form. Okay? And to weigh the facts and the arguments and the questions raised in those comments in deriving the best policy for the American people. It is not a popularity contest. There are too many ways through technology means or just the serendipity of whatever group happens to be mobilized or activated, right, that can skew the numbers wildly in one direction or another. And this applies to all sides of the

political spectrum.

So you know, good is an ambiguous term. But I'll stick with my definition. If it's substantive, even if it's disagreeable to the agency and it's worthy of consideration, it's factual and accurate, that's a good comment.

MR. BALLA: Just to add, I have an idealistic reaction to that question. And then a sort of more grounded in reality view, I think. Idealistically, I'd love to see the regulation version of School House Rock on just a bill. I mean we do a great job in civics education of understanding that part of the policy making process. Which happens to be -- no offense to anybody who works on the Hill -- which happens to be largely be broken in my estimation right now. And most of the interesting policy making action in this town is in the regulation sphere. And yet from a civics point of view, almost no American understands that.

And so idealistically I'd love to think that if we build it, they will come. That

if we just make that School House Rock video, the scales will fall from their eyes and they will get it. More realistically, I teach on regulation at George Washington University where my students are interning on the Hill. I mean they're super smart, super motivated, working in offices on K Street and the White House. None of them have ever heard of the Administrative Procedure Act when they walk into my class as a Senior Political Science Major.

And so realistically, you know, there's a tips for submitting effective comments on the Regulations.gov website right now, which I think is quite good, that no one will ever read. And so I just think there's a fundamental disconnect that it's not a supply problem, it's a demand problem.

MS. HUTH: Thank you. I actually agree on the School House Rock. That was -- You were smiling because I've been talking about it. Maybe we can team up on that. We know how a bill becomes a law, but we don't know how a law

becomes a regulation.

So back to the APA, your favorite administrative law and mine. It does require us to consider, you know, written data, views, arguments, you know, the substantive stuff. So let's ask though -- we also know in the preamble to a regulation, agencies are required to do sort of a summary. So what are agencies legal requirements when they are providing that summary? Should they be measuring accurately the aggregate comment or feedback, you know, the percentages or acknowledging it in some way? I mean is it -- we have been hearing different views. It is relevant. Is it not? What are your thoughts on those requirements in the summary?

MR. BULL: Yeah, so my understanding of the underlying law is that, basically what the APA says that the agency has to consider the relevant matter presented. And the definition of relevant matter presented will depend on the case law. And the case law is very clear that any

data that's provided, that the agency fails to take into account, that's a grounds for challenging the rule on judicial review.

I am not aware of any case -- correct me if I'm wrong -- but where an agency has ever been challenged for not providing a tabulation of the opinions expressed in the comments, either in percentage form or in an overall number form. Not many agencies do. You know, they'll actually provide as part of the preamble, a statement that we got X number of comments, particularly with these mass comment campaigns. Oftentimes the agency will note the number of comments received and the opinions expressed in those comments. But I don't believe a court would ever strike down an agency's rule for failing to adequately grapple with the opinions expressed in comments. It's really just the underlying data that the agency's legally obligated to consider.

MR. BALLA: I would add to that. I just want to emphasize that the administrative rulemaking is just that immediately. It's a

legal administrative process, right, grounded in statute, judicial review, all of that. But of course it also occurs within the context of the American political system. So again, not as an administrative lawyer, should the number of comments matter in the narrow sense of the legal administrative process. I don't see a good immediate argument for that. But that can still be a powerful tool in the larger political debate that occurs around rulemaking.

So again, Waters of the United States, EPA Administrator McCarthy on Capitol Hill testified that we received a million comments and 87.1 percent were in favor of our rule, which was then shortly thereafter finalized. Right? And so that group of one million comments -- you know, it was a mass comment campaign, didn't carry any legal standing, but it was certainly useful in that political moment.

MS. HUTH: Thanks. I'm going to answer this question. Is the U.S. Digital Service going to play a role in our solutions?

We have met with U.S. Digital Service and we're exploring working together.

MR. SCHROEDER: Virginia, we're on maybe our last question.

MS. HUTH: All right. Final question is when we look at the means of using the sensitivity analysis, you know, predictive services in terms of is it a fake comment or bot? We give deference to the agencies on what that level is. But isn't there a risk that there still will be some sort of false positive in the end? And how do we feel about that? I mean is it ever possible to perfectly and completely accurately attribute a fake comment as being fake or should we allow some risk?

MR. FITZPATRICK: I don't think we ever do anything with 100 percent certainty. So maybe we'll achieve metaphysical perfection on that at some point in the future, but I doubt it. But look, life isn't -- that's not life. Right? Life is a series of choices that one makes and balances that one draws. And you do the best you

can to achieve the greater public good.

And so I think it's clear that the concept of false positives is resonant and it should be because that in a sense is the biggest risk point of actually trying to address the risk point of fake comments. Right? It's that you're going to exclude some who may legitimately want to comment.

My sense is -- look, folks who use these tools in the private sector -- and by the way in the public sector -- but certainly in the private sector, share those same interests. Right? Nobody wants to turn away a legitimate customer who's going to buy something on your website. No one's going to want to turn away a legitimate customer who's going to click on ads on your website. And yet they are used because the greater good of stopping an immense amount of damaging behavior vastly outweighs that.

And over time, the ability to reduce to -- I anticipate to a very, very, very small level, the incidents of false positives is going

to be there. Because I think it already is. I think the value of these tools is already evident to people who choose to apply them to their own important sites.

I'm confident of that, but I'm trying not to be glib about this at all. That's why I confided in my own opening remarks. That's to me, the key challenge for the agency is to set the filtering and to do something with the flagged comments that can address the false positive question to the greatest extent possible or at least minimize the impact of that if possible. So thanks for the questions.

MS. HUTH: So I think that does conclude our second panel. Thank you, gentleman very much. I'll just make a couple closing remarks and work my way up.

I'll turn the other one off. So thank you again for coming today. This is just the beginning of a very important conversation on the subject of the mass and the fake comments, along with a broader conversation about how we can

improve the electronic rulemaking system as a whole. Our goal is to really improve the services to our federal agencies, to the public, to all of our stakeholders.

I encourage you to check out the docket that we've set up on the topic of modernization of electronic rulemaking. We've got a lot of materials there. We invite you to send more materials or provide comments. And that's open through April 30th. Again as Tobias hinted, we have sort of a long-term timeframe of working on this. And we want to do it right.

Put March 25th on your calendars. That's our next public meeting. And it's going to be on sharing data on regulatory stuff; conducting data analysis, integrating systems across government, and all kinds of related issues. So I hope to see you then. We're still looking for some panelists. So let us know. We'll be putting that slate together pretty soon.

If you are interested in learning more, again go to Regulations.gov. I want to say

a big thank you to our panelists here. And I don't know if we applauded the earlier panel. So thank you very much to both panels. We really, really appreciate your resources. I have to of course thank Jessica, my boss, who made this happen for us. And Dominic Mancini had to leave, but he was a big supporter as well. And especially thank you to you who came here in-person and to all of our virtual attendees to be a part of this very important dialogue. So thanks again for coming. And I hope to see you soon.

(Whereupon, the above-entitled matter went off the record at 3:57 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Mass and Fake Comments
Public Meeting

Before: US GSA

Date: 01-30-20

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter