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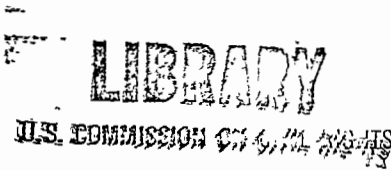
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COMMISSION ON CIVIL RIGHTS

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MEETING

+ + + + +



Friday,
October 13, 2006

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The meeting was held in Room 540 of 624
Ninth Street, N.W., Washington, D.C., at 9:00 a.m.,
Gerald A. Reynolds, Chairman, presiding.

PRESENT:

- GERALD A. REYNOLDS CHAIRMAN
- ASHLEY L. TAYLOR COMMISSIONER
- ARLAN D. MELENDEZ COMMISSIONER
- MICHAEL YAKI COMMISSIONER
- PETER KIRSANOW COMMISSIONER
- JENNIFER C. BRACERAS COMMISSIONER

STAFF PRESENT:

- KENNETH L. MARCUS STAFF DIRECTOR
- DEREK HORNE, ESQ. OFFICE OF THE STAFF DIRECTOR
- DAVID BLACKWOOD, ESQ. OFFICE OF GENERAL COUNSEL

ORIGINAL

STAFF PRESENT (Continued):

MARGARET BUTLER OFFICE OF CIVIL RIGHTS
 EVALUATION

MANUEL ALBA PUBLIC AFFAIRS UNIT

TINA LOUISE MARTIN OFFICE OF MANAGEMENT

TYRO BEATTY HUMAN RESOURCES DIVISION

PAMELA DUNSTON ADMINISTRATIVE SERVICES AND
 CLEARINGHOUSE DIVISION

CHRISTOPHER BYRNES, ESQ OFFICE OF THE STAFF DIRECTOR

RICHARD SCHMECEL

KIMBERLY SCHULDZ

SOCK-FOON MAC DOUGALL

BERNARD QUARTERMAN

MICHELE YORKMAN RAMEY

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Adjourn	

P R O C E E D I N G S

(9:10 a.m.)

CHAIRMAN REYNOLDS: Okay. This meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights at 624 Ninth Street, N.W., Room 540, Washington, D.C.

COMMISSIONER YAKI: Zip code?

CHAIRMAN REYNOLDS: No zip code.

With the exception of the Vice Chair, Abigail Thernstrom, all Commissioners are present.

I. Approval of Agenda

The first item on the agenda is the approval of the agenda. I would like to move to amend the agenda under Program Planning. I'd like to delete "Research on Academic Mismatch." That's not ready, and the same would be true for "Procedures for National Office Work Products." That's not ready.

So with that amendment is there a second?

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: All in favor say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any abstentions?

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1 Dissents?

2 (No response.)

3 CHAIRMAN REYNOLDS: The motion carries.

4 **II. Approval of Minutes of August 18 Meeting**

5 Okay. The second item on the agenda is
6 the approval of the minutes of the August 18, 2006
7 meeting. May I have a motion approving the minutes?

8 COMMISSIONER KIRSANOW: So moved.

9 CHAIRMAN REYNOLDS: A second?

10 COMMISSIONER MELENDEZ: Second.

11 CHAIRMAN REYNOLDS: Discussion?

12 (No response.)

13 CHAIRMAN REYNOLDS: All in favor say aye.

14 (Chorus of ayes.)

15 CHAIRMAN REYNOLDS: Any objections?

16 Abstentions?

17 COMMISSIONER YAKI: Question.

18 CHAIRMAN REYNOLDS: Yes.

19 COMMISSIONER YAKI: The August 18th
20 meeting, was that the meet where all of the votes were
21 voided, a lot of them?

22 MR. MARCUS: That was one of the meetings,
23 yes.

24 COMMISSIONER YAKI: Okay, and are the
25 minutes being recalibrated to reflect that?

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1 MR. MARCUS: The minutes do reflect that
2 on page 4.

3 COMMISSIONER YAKI: Okay.

4 CHAIRMAN REYNOLDS: Okay. Did we vote?
5 Okay.

6 **III. Staff Director's Report**

7 Okay. Mr. Staff Director, do you have
8 anything to report?

9 MR. MARCUS: Certainly, Mr. Chairman. I
10 think there are a few things that I'd like to report
11 on.

12 First, as the Commissioners know, over the
13 last year and a half we've put in place a number of
14 new procedures and new controls in order to address
15 the significant management and operations problems
16 that had been recognized in numerous audits, including
17 GAO and OPM audits in which we've been talking about
18 over the years.

19 Our hope is not only to remedy the defects
20 that we've had in the agency, but ultimately to serve
21 as a model of excellence in government administration
22 and to provide best practices that can be emulated
23 throughout the government.

24 I don't think that we have reached that
25 yet with respect to all of our management and

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1 operations issues, and we have still quite a number of
2 challenges to deal with, but we do have staff members
3 who are working diligently to try not only to correct
4 past deficiencies, but to provide best practices.

5 I'm very pleased that our human resources
6 activities have been recognized through best practices
7 within the last month. In particular, our new
8 Director of Human Resources has put in place a
9 recruitment system to implement the OPM career
10 partners which has been recognized by OPM. They have
11 asked our HR Director to be one of three HR leaders to
12 provide best practices in a significant
13 intergovernmental meeting last month. They've also
14 asked to give other sorts of input from the Commission
15 based on our early experience getting very good
16 results from our application of the career patterns.

17 I think that we are indebted to our new
18 Director of HR, Tyro Beatty, who has come on board and
19 helped us to provide not just a remedy for weaknesses,
20 but for some early best practices that have already
21 been recognized.

22 CHAIRMAN REYNOLDS: Okay, and would you
23 also talk about the activity, the meeting that was
24 held in Connecticut by the Connecticut SAC?

25 MR. MARCUS: I'd be pleased to, Mr.

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1 Chairman.

2 I did have the opportunity to travel to
3 Hartford last month to attend the meeting of the
4 Connecticut State Advisory Committee. This is the
5 first meeting of the newly chartered Connecticut State
6 Advisory Committee, and I think it is one of the most
7 exciting events that we've had in our State Advisory
8 Committee system in quite some time.

9 The Connecticut SAC had been dormant for
10 a significant period. I spoke with long time members
11 who had never attended a Connecticut SAC event simply
12 because there had not been meetings in the past for
13 resource problems and other issues.

14 The Connecticut SAC, as you know, was very
15 recently rechartered by this Commission. It was
16 rechartered only last month, and I am pleased that the
17 event signaled that we have within the State of
18 Connecticut a newly vigorous presence. The meeting
19 was conducted in the State House in Hartford. It
20 featured participation by the Mayor of Hartford, a
21 senior representative of the Office of the Governor,
22 well known government officials at a municipal level,
23 and a wide variety of speakers representing different
24 perspectives, different political perspectives,
25 perspectives from different stakeholders, different

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1 takes on the issue.

2 The issue was school choice as a civil
3 rights issues. There were members of the panel who
4 are not familiar with the issue, and I think they
5 learned a great deal. There were also members of the
6 panel who were rather expert on the topic, and even
7 they learned a great deal.

8 The panel itself, I think, worked together
9 in an exemplary fashion. It is a new group composed
10 of both returning members and also new members. It
11 is, I would say, an unusually distinguished group of
12 with a wide variety of individuals.

13 I was really pleased to meet some of these
14 people who I think are among the leading citizens of
15 the State of Connecticut. They included the pastor of
16 the First Cathedral Baptist Church in Bloomfield,
17 which is one of the largest churches in New England,
18 and certainly one of the largest predominantly
19 minority churches.

20 One of the leading civil rights litigators
21 in the State of Connecticut, the President of the
22 Connecticut Institute of the Blind, the Shelby Cullen
23 Davis Professor of American Business and Economic
24 Enterprise, a Chairman of the East End Community
25 Council and a veteran of the Bridgeport Police

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1 Department, a legislative analyst for the Connecticut
2 Latino and Puerto Rican Affairs Commission, the
3 Director of the Asian American Cultural Center at the
4 University of Connecticut at Storrs, the Indian
5 Affairs Coordinator with the state's Department of
6 Environmental Protection, a tenured Professor of
7 Economics at the University of Connecticut, the
8 Executive Director of a think tank in Connecticut, and
9 an environmental attorney who chairs the Hartford
10 Federalist Society Chapter.

11 Some of these people had been on the
12 committee before. Many were new, but I think that the
13 energy and vigor and vitality and cooperation that
14 they had there was very pleasing to see, and I think
15 the members of this Commission would have been pleased
16 if they had had an opportunity to see them.

17 They were also, I would say, quite
18 grateful to the Commission for providing the resource
19 and the wherewithal to do it. I would commend Ivy
20 Davis, the Eastern Regional Office Director, for her
21 leadership and Barbara Delavis, the staff person who
22 spent so many nights and weekends to put this
23 together.

24 One other thing that I'd like to briefly
25 mention is that we do not yet have appropriations for

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1 the fiscal year. The Commissioners know that this is
2 the first Commission meeting of the new fiscal year.
3 The President's budget, I think, recognized some of
4 the advances we've made in management and operations
5 by requesting a modest increase for the agency. The
6 increase was intended to enable us to hire two new
7 attorneys, provide a public service announcement, and
8 to provide some modest funds for state advisory
9 committee travel.

10 Unfortunately, while both houses of
11 Congress are in the midst of developing our
12 appropriations, at this point neither chamber is
13 looking at numbers that provide that increase, and in
14 fact, both chambers at this point have numbers that
15 would be a cut in real terms, even without
16 consideration a rescission. So in future meetings
17 we'll have to talk about projections.

18 It could be that some of the things that
19 we were planning to do for this new fiscal year may
20 have to be scaled down, including, for instance, the
21 new attorneys, the public service announcement, some
22 of the expanded SAC travel, and we'll have to revisit
23 that when we have actual numbers.

24 CHAIRMAN REYNOLDS: Any other questions?

25 Yes.

1 COMMISSIONER YAKI: We're under a
2 continuing resolution right now, correct?

3 MR. MARCUS: That's correct.

4 **IV. Program Planning**

5 CHAIRMAN REYNOLDS: Okay. All right.
6 Next up we're going to discuss the work for the
7 briefing on the benefits of diversity in K through 12
8 education. May I have a motion that the Commission
9 accept into the record the panelist source materials
10 for the July 28th, 2006 briefing on the benefits of
11 diversity in elementary and secondary education that
12 was distributed to Commissioners on September 1st,
13 October 4th, and October 6th?

14 COMMISSIONER BRACERAS: So moved.

15 CHAIRMAN REYNOLDS: Is there a second?

16 COMMISSIONER KIRSANOW: Second.

17 CHAIRMAN REYNOLDS: Discussion?
18 Commissioner Yaki.

19 COMMISSIONER YAKI: Just for the record,
20 did we set a cutoff date for when source materials
21 were supposed to be received? And were all of the
22 source materials that we have that were distributed
23 received by the cutoff date?

24 CHAIRMAN REYNOLDS: That's a question for
25 the Staff Director.

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1 MR. MARCUS: I'm sorry. I believe
2 Commissioner Yaki is asking about the public comment
3 period for the comments on the K-12 diversity
4 briefing; is that correct, Commissioner Yaki?

5 COMMISSIONER YAKI: Yes, I am.

6 MR. MARCUS: The Commission has not
7 established a public comment period. There was
8 discussion at a prior meeting about whether there
9 should be a 30-day or, I believe, a 60-day period for
10 public comment. As I recall, the Commission adopted
11 the 30-day rather than the 60-day, but later
12 determined that there were quorum issues so that
13 neither the 30-day nor the 60-day was adopted.

14 There was a prospect of a notational vote
15 to ratify the 30-day period, but at the request of one
16 Commissioner, that notational vote was not taken. So
17 we have not established either a 30-day or a 60-day
18 period, which is to say there is no public comment
19 period.

20 However, we have accepted any comments
21 that we've gotten from the public, and I can tell you
22 that within the 30-day period from the time of the
23 briefing there were zero comments received. Within 60
24 days there were zero comments received. We've
25 received, in fact, no public comment. So the question

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1 whether it should be 60 or 90 days is rather moot.

2 COMMISSIONER YAKI: I wasn't talking about
3 the public comment. I was talking about the source
4 materials themselves. In other words, one of the
5 things for which a record is open is that if the
6 panelist says, "Well, I relied on Wikipedia," you
7 know, whatever it was, and they submit it. That
8 becomes part of the record.

9 If they choose not submit it, I assume
10 that it goes into the ether and it's not our job to go
11 and try and pull it together.

12 So my question is we received two large
13 packets of information regarding this briefing, and I
14 would like to know exactly when we received each one
15 and how many days after the briefing they were
16 received.

17 MR. MARCUS: We asked the panelists to
18 provide their source materials, and we received them
19 and sent them to the Commissioners fairly shortly
20 after we received them.

21 COMMISSIONER YAKI: So I presume that the
22 large packet we received last week was received some
23 time not too long before that?

24 MR. MARCUS: That's right.

25 CHAIRMAN REYNOLDS: And that information

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1 will be included in the records, the information that
2 was provided to the Commissioners.

3 MR. MARCUS: That's correct.

4 COMMISSIONER YAKI: All source materials?

5 MR. MARCUS: All of the --

6 COMMISSIONER YAKI: So anything referred
7 to -- I'm puzzled by this because when you say the
8 words "source materials," I just want to know how you
9 define that. Do you define that to be anything that
10 a panelist has cited as part of his or her testimony
11 or material that the panelist has subsequently
12 provided to the Commission no matter what the date
13 that is, and whether or not that was adequately
14 communicated to every single panelist that that,
15 indeed, is the case.

16 MR. MARCUS: I'm referring to all of the
17 materials that were provided by the panelists to the
18 Commission and which were subsequently distributed to
19 all Commissioners.

20 COMMISSIONER YAKI: You're avoiding my
21 question.

22 MR. MARCUS: I think I'm answering your
23 question.

24 COMMISSIONER YAKI: I don't think so. My
25 question is when we ask -- the way that you define

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1 source materials would, therefore, allow anyone or
2 should allow anyone to submit materials to the
3 Commission for review regardless of the date,
4 regardless of how long after a briefing had been done,
5 outside 30 or 60 days, what have you, because
6 certainly the second batch was received I would say
7 more than 60 days afterwards.

8 The question I'm asking is I want to know
9 what the policy is because this is the first I'm aware
10 that any source materials by any panelist may be
11 accepted at any time by the Commission for purposes of
12 review, discussion, and what have you, and certainly
13 this is the first time they were ever distributed to
14 Commissioners, whereas in prior meetings I think I
15 made a point that I had never seen some of the stuff
16 that had apparently shown up in one of the reports.

17 So I'm glad about that, but I'm trying to
18 find out what is the exact policy of the Commission
19 with regard to source materials by a panelist, and it
20 goes to this, which is that if it is an open ended
21 item, I think it behooves us to understand and to know
22 that there should be and can be other opportunities to
23 supplement panelists' testimony with further source
24 materials that perhaps they were unaware of and I was
25 unaware of.

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1 CHAIRMAN REYNOLDS: Commissioner Yaki, I
2 don't believe that our past practice allows for
3 panelists to submit materials indefinitely. I don't
4 think that a panelist would have an opportunity to
5 supplement the record five years after we've published
6 a document.

7 So I think that your question rests on the
8 assumption that there is this indefinite period, or
9 are you asking the question is there an indefinite
10 period?

11 COMMISSIONER YAKI: Well, there appears to
12 be an indefinite period subject to the fact that if
13 something gets published, that somehow becomes the
14 magical cutoff point, but even then if you were in
15 round one of edits of something and then a panelist
16 says, "Oh, I'm sorry. I forgot that I could have done
17 this, and here are 4,000 more pages of social science
18 research that you should be incorporating into this,"
19 blah, blah, blah, blah, blah, blah.

20 CHAIRMAN REYNOLDS: Okay. Ken, do you
21 want to shed some light on what past practices --

22 COMMISSIONER YAKI: I'm just saying the
23 reason I'm asking this is that it pertains very much
24 to the further discussion I wish to have on the K
25 through 12 briefing and where it goes from here.

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1 CHAIRMAN REYNOLDS: Well, is this the
2 appropriate time to discuss it? Do you want to wait
3 until we -- well, no, let's just get it over with now.

4 Are you suggesting that we should have a
5 policy that has a deadline for when panelists can
6 submit their materials?

7 COMMISSIONER YAKI: I think that most
8 bodies that take testimony and take information should
9 establish a deadline, number one.

10 Number two, if there's a different
11 deadline with regard to public comment versus
12 panelists, that should be differentiated as well
13 because in the -- this is just my own experience -- in
14 the world that I used to live in, a public comment
15 period is a public comment period that is for everyone
16 involved, no matter what the supplemental testimony or
17 what have you. And when that time came for when that
18 30 days was over, that was over. You couldn't say,
19 "Oh, I'm a panelist. Therefore, I get the opportunity
20 on day 31 or 32."

21 And I think that should be communicated
22 clearly to the panelists as well that this is the
23 magical time because otherwise it delays our review,
24 staff review, whatever review of other materials that
25 are out there.

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1 CHAIRMAN REYNOLDS: Commissioner Yaki,
2 that makes sense, and I think that this conversation
3 is one that was initially started by, I believe,
4 Commissioner Braceras and Kirsanow basically and
5 Commissioner Melendez, the need to have some formal
6 rules in place regarding our briefings.

7 And we will discuss that, I believe, later
8 in the agenda, but on that particular issue, I agree
9 with you. I think that there needs to be a cutoff.

10 Now, I don't believe that any panelist has
11 supplemented their testimony, you know, far off into
12 the future. So it's not clear to me that --

13 COMMISSIONER YAKI: Well, that's where I
14 would beg to differ. I would say that the large
15 volume of materials that I received in the middle of
16 last week relating to the K through 12 briefing was,
17 indeed, July to August, September, two and a half
18 months practically from the time of the first briefing
19 that these materials showed up, and they showed up a
20 few days around the time that we were supposed to be
21 delivering comments on a first draft of a briefing
22 report.

23 CHAIRMAN REYNOLDS: Okay.

24 COMMISSIONER YAKI: So that's the point
25 that I'm making.

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1 CHAIRMAN REYNOLDS: Okay, all right.
2 Well, I think you make good points, and I think that
3 we will cover this topic later on in this meeting.

4 Okay. Any other comments, questions?

5 (No response.)

6 CHAIRMAN REYNOLDS: All right. All in
7 favor say aye.

8 COMMISSIONER YAKI: Well, no, I still have
9 a question.

10 CHAIRMAN REYNOLDS: I'm sorry?

11 COMMISSIONER YAKI: What source materials?

12 Are we talking about all of the sources materials?

13 The ones that are distributed September 1, 4th and
14 6th?

15 CHAIRMAN REYNOLDS: You're asking -- I'm
16 sorry. Rephrase the question.

17 COMMISSIONER YAKI: We are taking into the
18 record everyone's source materials?

19 CHAIRMAN REYNOLDS: All of the panelists.

20 COMMISSIONER YAKI: Okay.

21 CHAIRMAN REYNOLDS: Okay. All in favor
22 say aye.

23 (Chorus of ayes.)

24 CHAIRMAN REYNOLDS: Objections?

25 COMMISSIONER YAKI: Aye, me. Sorry. I

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1 object.

2 CHAIRMAN REYNOLDS: Okay. Let the record
3 reflect that all voted in favor with the exceptions of
4 Commissioners Yaki and Melendez. The motion carries.

5 Okay. May I have a motion that the
6 Commission conduct the Commission briefing and
7 business meeting currently scheduled for November 17th
8 on November 9th? Under this motion, the Commissioners
9 would be able to provide comments on the draft
10 briefing report circulated on September 29th, 2006 and
11 would vote on the briefing report on November 9th.

12 Concurring and dissenting statements would
13 be due on the 9th.

14 Is there a second?

15 COMMISSIONER TAYLOR: Did anybody move
16 that? You need a motion.

17 CHAIRMAN REYNOLDS: Okay.

18 COMMISSIONER TAYLOR: So moved.

19 CHAIRMAN REYNOLDS: Thank you.

20 COMMISSIONER KIRSANOW: Second.

21 CHAIRMAN REYNOLDS: Comments.
22 Commissioner Yaki.

23 COMMISSIONER YAKI: I'm going to start
24 off. I think Commissioner Melendez has more detailed
25 comments. I'm just going to start off by saying this

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1 is nutty. When we received I don't know how many
2 hundreds, a thousand or so pages of additional source
3 materials in the first week of October on this issue.

4 When it was received, when it was implied
5 that it was relied upon in great detail for the draft,
6 that we have this artificially compressed time
7 schedule that is ad hoc and does not really follow any
8 sort of formal procedure other than simple expediency
9 in terms of the end game for the deadline with
10 incredibly short times for a dissent to be written
11 given that the vote will not be until the third and
12 then ten days to do a dissent on a document that if I
13 were to estimate has about three to 4,000 pages of
14 source materials, in addition to the volumes of
15 testimony during the hearing.

16 I think this is a gross misuse of the
17 briefing process. A gross misuse. There is no
18 process, and I would just say that I have serious
19 concerns about the ability, my ability, to write a
20 dissent in a short period of time, wading through all
21 of these materials, given that the first draft, which
22 is not going to be obviously the final draft, was only
23 distributed about a week and a half ago.

24 CHAIRMAN REYNOLDS: Okay. In response,
25 you will have until, assuming that you dissent,

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1 November 9th to write your dissent, and I agree that
2 there is a lot of material to wade through, and I also
3 agree that the burden for those who dissent are not
4 the same as the majority since you'll have to actually
5 do the writing.

6 But the reason for the dates that have
7 been selected is that this is an important topic, a
8 topic that will be heard by the Supreme Court, and I
9 think that it's extremely important that the
10 Commission participate in the debate.

11 CHAIRMAN REYNOLDS: I think, with all due
12 respect, Mr. Chair, I think the idea of a month from
13 the time that we saw the first draft to the time a
14 dissent is supposed to be written when the process
15 should allow us at least a month to review the draft
16 in the first place; I just think regardless of what
17 the deadline is for the Supreme Court, the fact of the
18 matter is that there's an integrity to the process
19 that's going forward, that should go forward and
20 should accompany what we do, and if we're simply
21 saying, "Well, gee, there's something hot going on
22 right now. So we're going to shift all of our gears.
23 We're going to essentially say to anyone who might
24 disagree, well, we're sorry that we and the entire
25 resources of staff and others to write this report for

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1 you and look at 6,000 pages of materials, and you have
2 one month to figure out what it is we wrote and then
3 figure out how to do a dissent from that, I think, is
4 unfair.

5 CHAIRMAN REYNOLDS: Commissioner Melendez.

6 COMMISSIONER MELENDEZ: Yes. As you know,
7 I sent in the memo to most of the Commissioners. I
8 was more concerned about process as far as -- and time
9 frames also. I know that many times we don't have
10 enough time to respond, especially if things are
11 changing, if material is being sent into us and we're
12 asking a question of, well, what does that actually
13 mean; does it change the opinion of the draft report.

14 And I ask the question of whether or not
15 even the A1 administrative instruction 1.6 applied to
16 this type, you know, the report process where it
17 actually states in there I believe we should have one
18 month or four weeks to actually comment. I believe
19 that Staff Director Marcus said that he did not feel
20 that that was applicable to the 1.6, Section 14 and
21 all of those different places that basically applied,
22 the time frames and all of those different things.

23 The other thing is that, you know, the
24 question would be whether or not when we get
25 testimony, if it's just basically writing a report

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1 that had everybody's testimony, but if for some reason
2 we start to alter the report, such as in the native
3 Hawaiians, where our own staff starts to put in their
4 own opinions on the outcome of the briefing, you know,
5 then I think that the Commissioners, even myself,
6 should be able to look at that because we have a
7 document that seems to change.

8 And the question would be when do we
9 actually say that it's a closed report and nothing is
10 going to change, and then we can comment on that. But
11 the way I see it, things seem to gradually be changing
12 with submittals of the panelists, with time frames
13 changing as to when do we actually review what's being
14 submitted.

15 So I have a real concern on time frames as
16 to our input, and I recognize that the Supreme Court
17 decisions or Supreme Court hearings are in place and
18 we're on the fast track, but we sure don't want to
19 send something up there that we're not all agreeable
20 to and that's irrelevant to the briefing and not
21 really just opinions of staff within Civil Rights
22 Commission office here. So I do have a concern.

23 CHAIRMAN REYNOLDS: I'm sorry, and you --

24 COMMISSIONER BRACERAS: May I speak to
25 those concerns?

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1 CHAIRMAN REYNOLDS: Yes. Commissioner
2 Braceras.

3 COMMISSIONER BRACERAS: Just a bit of
4 history about the process. When the new leadership at
5 this Commission was appointed, one of the first things
6 we did was establish a working group on reform to
7 address some of the procedural issues, and the rules
8 that you cite to are basically the rules that the
9 working group came up with to deal with Commissioner
10 input and time lines for reports coming out of
11 hearings.

12 And so I agree with the Staff Director
13 that they don't apply to this particular situation.
14 However, I also agree with Commissioner Melendez and
15 Commissioner Yaki that there needs to be a process for
16 these other types of reports because what we didn't
17 anticipate when we came up with those rules was that
18 the model that we use was going to shift. So we came
19 up with rules for reports that were not now currently
20 making the mainstay of our work.

21 And I do believe that the spirit of those
22 rules should apply to briefing reports, but one of
23 the reasons that we switched to the briefing report
24 model was not to avoid application of the rules, but
25 in order to be more timely and relevant and

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1 potentially be cited more, and all of those other
2 things, to be able to do shorter, quicker, less labor
3 intensive, but more timely topics.

4 So I think that while we definitely need
5 rules and in many ways the rules will be similar to
6 the ones we've established for larger reports, they
7 do need some revision and tinkering to make them more
8 applicable to a briefing format.

9 And I'm a huge process person. So I hear
10 your concerns, and you know, my recommendation would
11 be to ask the Staff Director to try to revise the
12 current rules that are in place, revise them in a way
13 that will reflect the needs of the briefing process
14 and shorter time frames so that we can have those
15 rules in place as quickly as possible, hopefully by
16 the November-December meeting, recognizing that the
17 staff is stretched and that putting together rules
18 takes time.

19 The only reason I don't recommend that it
20 be done at the working group level is because I think
21 as we've all seen, you know, we all have other jobs
22 and other demands on our time, and I think sometimes,
23 you know, establishing a working group can actually
24 make things take longer.

25 And so in the interest of addressing your

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1 concerns quickly, I would ask the staff director to
2 come up with a set of rules that addresses process
3 within the next two months.

4 CHAIRMAN REYNOLDS: Commissioner Yaki.

5 COMMISSIONER YAKI: I appreciate what
6 Commissioner Braceras has said. I was part of that
7 working group on reform and fully participated and
8 felt included as part of that process under her
9 leadership.

10 I want to say that Commissioner Braceras
11 described how the briefing issue involved, and
12 actually I remember that I was part of that movement
13 to push the Commission into doing briefings, but to my
14 chagrin, it has changed.

15 When we first talked about doing
16 briefings, I think when you look at the AI, Section
17 12.01, that pretty much sums up what I believe that
18 briefings were supposed to be. They would be used by
19 the Commission, quote, to provide Commissioners and
20 the general public insight into civil rights issues
21 without the formality of a hearing.

22 We understood we didn't have the budget to
23 do formal hearings. We talk about that all the time,
24 how much extra it costs, how much more time it takes,
25 how much more staff preparation and what have you.

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1 But again, and maybe this is just my own
2 experience, but in the legislative world that I used
3 to exist in, briefings were just that. They were
4 briefings. They were for people to come give opinion,
5 give their insight, give their testimony, give their
6 what have you on an issue to illuminate it, shed light
7 on it, provoke further thought and debate.

8 What has happened during that time period
9 and why I'm concerned about that has happened to the
10 briefing process is that they've turned into mini
11 national reports, and I think Commissioner Braceras
12 hit it on the head. It's essentially becoming the
13 same type of thing, except (a) without the process
14 attached to it and (b) it's more than just this kind
15 of a process. There's an integrity to the form
16 hearing or to the formal report process, which gives
17 a better data wash and review to the materials that
18 are presented.

19 I think the worse case in point was the
20 Hawaii report where we looked at findings and
21 recommendations that came out of nowhere for most of
22 us in terms of what the source materials were, who
23 made the interpretations and what have you.

24 And I think rather than simply say, "Well,
25 that's a fault of the staff," I think, no, it's a

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1 fault of how briefings have been converted since the
2 original intent of this, and if they're being
3 converted into mini national reports, they need to be
4 treated like mini national reports for the purposes of
5 the intellectual and scholastic rigor that goes with
6 it.

7 That's why I have a fundamental problem
8 with this process. For example, the Adarand, which
9 was our first big report that we did, was a very
10 inclusive process. I dissented, yes, but I felt like
11 I had adequate time to review, to study, and that was
12 without an assistant, which I still do not have.

13 In this process, a report that is by the
14 Chair's own admission timed to coincide with a
15 deadline for essentially reply briefs for the Supreme
16 Court cases in Seattle and Louisville, I am being
17 given substantially less time to discuss it, to
18 understand it, to review it, to critique it.

19 I mean, my dissent in Adarand was a two to
20 three-month process in the making. It was something
21 that started with the first draft. I started to think
22 about where we were going, what have you.

23 We got this first draft just what, a week
24 and a half ago, I think? Not much more. We had to
25 have our comments in by what, the ninth or something?

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1 I don't know. It was an incredibly short period of
2 time. The last week of September and then the
3 comments were due the first week of October. Here we
4 are barely in the second week.

5 That to me really violates the spirit of
6 what it is we're trying to do and, I believe, runs a
7 serious risk of tainting the reliability, the academic
8 and scholastic rigor of a report that, again, by the
9 Chair's own statement, he wishes to be heard or be
10 seen or be cited or at least reviewed by those dealing
11 with the Supreme Court cases in Seattle and
12 Louisville.

13 And, you know, from September 28th, I
14 believe, to November 13th, start to finish, with a
15 passel of materials this big coming in the middle of
16 that to deal with I think is difficult to justify.

17 CHAIRMAN REYNOLDS: Well, Commissioners
18 Yaki and Melendez, you've made some arguments that
19 resonate with I would say most of the Commissioners,
20 if not all. I think that in response to your strong
21 arguments, at least some of them, that we will --
22 well, I agree with most of what you said, but not all
23 -- but in any event, I think that Commissioner
24 Braceras' recommendation is a good one, and I think
25 that it will address many of the process issues that

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1 you've just discussed, and in terms of the current
2 issue on the table, I think that rather than have the
3 meeting -- rather than move it to the ninth, we stick
4 with the 17th and provide an additional week after
5 that meeting for dissents and concurrences.

6 How do you respond to that as an attempt
7 that compromise?

8 COMMISSIONER YAKI: I need dates. I'm not
9 too sure what you just meant by the ninth versus
10 the -- I thought it was the third.

11 CHAIRMAN REYNOLDS: What I said was the
12 meeting would take place on the date scheduled, which
13 is the 17th, and that dissents and concurrences would
14 be due on the 24th.

15 COMMISSIONER BRACERAS: Of?

16 CHAIRMAN REYNOLDS: Of November.

17 COMMISSIONER BRACERAS: Of November?

18 CHAIRMAN REYNOLDS: Yes.

19 COMMISSIONER YAKI: What holiday does that
20 run into?

21 COMMISSIONER MELENDEZ: The 24th is
22 Thanksgiving, isn't it?

23 COMMISSIONER BRACERAS: Thanksgiving?

24 COMMISSIONER MELENDEZ: The day after
25 Thanksgiving.

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1 CHAIRMAN REYNOLDS: All right, all right.

2 COMMISSIONER YAKI: Not that I have any
3 aversion to working through the turkey.

4 CHAIRMAN REYNOLDS: Okay. Well, how about
5 this? Let's make it the 27th.

6 (Pause in proceedings.)

7 COMMISSIONER BRACERAS: Can I ask a
8 question?

9 CHAIRMAN REYNOLDS: Sure.

10 COMMISSIONER BRACERAS: While we're
11 mulling these dates, is there also a date by which
12 comments on the draft will be due and the second draft
13 circulated if there are going to be changes made,
14 stylistic or what have you, to the current document?

15 CHAIRMAN REYNOLDS: Okay. Since my
16 picking dates without consulting with staff may cause
17 some problems, Ken, would that approach affect you
18 folks?

19 (The Chair conferred with staff.)

20 MR. MARCUS: Mr. Chairman, if the meeting
21 continues to be on the 17th rather than the date you
22 had indicated earlier, then we would do the mail-out
23 of the proposed final on the ninth. If we use the
24 ninth, then we would need to get Commissioner comments
25 on the second.

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1 We can provide a revised draft by the end
2 of next week. We have not at this point gotten a lot
3 of comments from Commissioners. So the revised draft
4 that we would send by the end of next week will not
5 look terribly different from the first draft.

6 So you would have from the end of next week
7 until approximately the second for your second round
8 of comments, and then the proposed final on the ninth.

9 CHAIRMAN REYNOLDS: Okay. Does any --

10 COMMISSIONER YAKI: And then the vote
11 would be on the 17th?

12 MR. MARCUS: Yes.

13 COMMISSIONER YAKI: And then the dissents
14 would be due on the 27th?

15 MR. MARCUS: Twenty-seventh, and I would
16 just say pushing it a little bit there, it's pushing
17 it a little bit in terms of getting the materials on
18 the Website in advance of the fifth. It should be
19 enough time, assuming that GPO maintains its regular
20 schedule during the holidays.

21 COMMISSIONER YAKI: Fifth of?

22 MR. MARCUS: I think we can get it done.

23 COMMISSIONER YAKI: Fifth of?

24 MR. MARCUS: December.

25 COMMISSIONER YAKI: Is there some magic to

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1 that date?

2 MR. MARCUS: That makes the oral argument
3 the 4th or 5th of December.

4 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

5 COMMISSIONER KIRSANOW: Mr. Chair, I just
6 want to make an observation as a follow-up to the
7 comments by Commissioner Braceras that we take a look
8 at or the Staff Director and the staff take a look at
9 devising rules with respect to the process by which
10 briefing reports are compiled. I think I
11 wholeheartedly agree with that recommendation.

12 The observation is just that in the
13 context of where the Commission has been and where it
14 is now, the manner in which briefing reports are put
15 together is not a stark departure from what had been
16 done prior to the working group formulating the
17 current process. In fact, it probably provides as
18 much, if not more, integrity to the process by which
19 hearing reports had been put together in the past.

20 Not quite, but I just want to note that in
21 the past reports were put together and dissents also
22 in somewhat of a truncated fashion, in some cases to
23 be timely, and I think back to the Florida 2000 report
24 where copious information and data and a need to
25 reconcile conflicting analyses that were quite

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1 detailed and complicated were done in a very short
2 time frame.

3 I think that I may be mistaken. Somebody
4 can correct me, but the dissent was crafted within a
5 month or so of the majority report being issued. That
6 was a significant issue that was being addressed and
7 had the context of a presidential election. There
8 were expert reports, and yet a hearing report was put
9 together, a dissent also.

10 And I think that the current briefing
11 reports, although I do think we need a response to
12 what Commissioner Yaki has indicated, a process
13 suggested by Commissioner Braceras to address
14 briefings as opposed to hearing reports; I think the
15 end product, while it could be improved, nonetheless
16 is probably as rigorous or close to as rigorous as
17 what the reports were under the hearing regime
18 previously.

19 COMMISSIONER YAKI: Is that damning with
20 faint praise?

21 (Laughter.)

22 COMMISSIONER YAKI: I mean, with all due
23 respect, one of the -- I mean, this was obviously one
24 of the concerns that I heard when I first joined this
25 body over a year ago and why I wholeheartedly

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1 supported Commissioner Braceras' reform efforts to add
2 more layers of review, input, and comment for that.

3 So I'm sorry if I sounded facetious, but
4 as my wife told me before, "You've really had no
5 sleep, Yaki. You really should think twice before you
6 say anything today."

7 COMMISSIONER KIRSANOW: I think that point
8 is that I'm not so sure that there is a dearth of
9 integrity in the processes by which we are putting
10 together the briefing reports. It can be improved,
11 but I don't think that it necessarily lays bare some
12 kind of huge defects with respect to the briefing
13 reports or the process by which we're getting there.

14 And I trust staff is doing -- we have
15 disagreements as to the outcomes on some of these
16 briefing reports, but I think the staff is doing a
17 good job in making sure that they have a certain
18 degree of rigor attached to them.

19 COMMISSIONER YAKI: Well, I will second
20 the Chair's amended schedule.

21 CHAIRMAN REYNOLDS: Okay. So just --

22 COMMISSIONER MELENDEZ: A question I had.
23 You know, on the recommendation to put together a
24 procedure in some manner that is basically outside of
25 the administrative instruction, is that what we're

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1 actually going to do?

2 And how does that become a valid
3 procedure?

4 CHAIRMAN REYNOLDS: No, I don't think
5 that's what's being suggested. I think that we
6 will --

7 COMMISSIONER BRACERAS: I didn't hear
8 Commissioner Melendez. I'm sorry.

9 COMMISSIONER MELENDEZ: Just going back to
10 your recommendation.

11 COMMISSIONER BRACERAS: I'm still stopped
12 up from the plane.

13 COMMISSIONER MELENDEZ: Working on
14 procedures, because I had raised a question that the
15 Staff Director said that we don't really follow the
16 administrative instruction for parts. The question
17 would be if we're going to work on some other
18 procedure that has to do with review, legal review and
19 everything else having to do with comments, what
20 basically type of procedure -- is that incorporated
21 into -- because this is the -- you know, it seems like
22 everything within the U.S. Civil Rights Commission, a
23 federal agency basically, just has to it seems
24 document every type of procedure that you have.

25 And it's one thing to have kind of

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1 informal type, even if they were adopted ourselves, to
2 something that's internal, but when we're sending out
3 documents that are basically used in Supreme Court
4 cases that are sent to Congress or wherever. It would
5 just seem to me that that has to be in some way
6 incorporated into some type of similar administrative
7 instructions even if, you know, the validity of it --

8 COMMISSIONER BRACERAS: I think I can
9 answer that question. The thought is that we
10 basically have a framework in place that needs to be
11 tailored to the new model, and that the Staff
12 Director's office would take a crack at revising the
13 rules that we have, altering time frames and the like,
14 so that it would apply to the briefing model.

15 And then that would be brought forward by
16 the Staff Director as soon as possible, but hopefully
17 the next meeting, for presentation to the
18 Commissioners, you know, distributed with the meeting
19 materials beforehand, and we could vote on it or make
20 changes to it and then vote on it as a Commission, and
21 we would vote to have it incorporated as an
22 administrative instruction.

23 CHAIRMAN REYNOLDS: Okay. So two issues.
24 I guess the one issue, let's be clear on the dates.
25 The deadline for receiving comments would be November

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1 2nd. The mail-out would occur on November 9th. The
2 Commission meeting will remain as scheduled on
3 November 17th.

4 The dissents, the deadline for dissents
5 and concurrences would be the 27th of November.

6 COMMISSIONER YAKI: Okay.

7 MR. MARCUS: And the next staff draft will
8 come up by the end of next week.

9 CHAIRMAN REYNOLDS: Okay. So --

10 COMMISSIONER YAKI: I seconded that.

11 CHAIRMAN REYNOLDS: Okay. Very good. All
12 in favor?

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Any dissents?

15 (No response.)

16 CHAIRMAN REYNOLDS: Any concurrences? The
17 motion passes unanimously. Thank you for your good
18 work, Commissioner Braceras. I like your
19 recommendation that we tighten up our -- have some
20 formal policies with regard to how we do our
21 briefings.

22 Okay. May I have a motion that the
23 Commission accept into the record the materials
24 received for the September 8th briefing on racially
25 identifiable school districts?

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1 Thus far we have received just one letter
2 with several attachments from Nebraska State Senator
3 Ron Raikes, who is the Chair of the Education
4 Committee of the Nebraska legislature.

5 May I have a motion?

6 COMMISSIONER TAYLOR: So moved.

7 CHAIRMAN REYNOLDS: Is there a second?

8 COMMISSIONER BRACERAS: Second.

9 CHAIRMAN REYNOLDS: Discussion?
10 Commissioner Yaki.

11 COMMISSIONER YAKI: I wasn't sure what I
12 should do with it. I got a gigantic package from one
13 of the people who was in the audience addressed to me
14 full of materials and other choice objects.

15 Would that be --

16 COMMISSIONER BRACERAS: What kind of
17 choice objects?

18 (Laughter.)

19 COMMISSIONER YAKI: It wasn't Omaha
20 State's. That's all I can tell you.

21 I mean it was addressed to me, but I think
22 it was also -- it seemed to be intended for the entire
23 Commission. I would like if we could incorporate
24 that. I think we will have it sent on to you
25 forthwith. I just realized that.

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1 CHAIRMAN REYNOLDS: I assume that there
2 are no objections.

3 MR. MARCUS: We're talking only about
4 documents, correct?

5 COMMISSIONER YAKI: Yes.

6 MR. MARCUS: He's keeping the objects.

7 COMMISSIONER BRACERAS: The objects will
8 remain in your house.

9 (Laughter.)

10 CHAIRMAN REYNOLDS: Any other questions or
11 comments?

12 (No response.)

13 CHAIRMAN REYNOLDS: All in favor please
14 say -- well, all in favor of the motion as amended by
15 Yaki, please say aye.

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Any objections? Any
18 concurrences?

19 (No response.)

20 CHAIRMAN REYNOLDS: The motion carries.
21 Mr. Staff Director, do you have an update
22 on the campus anti-Semitism public education campaign?

23 MR. MARCUS: Yes. Thank you, Mr.
24 Chairman.

25 We continued working with the outside

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1 organizations that I've referred to in prior meetings,
2 and in general I think that they are very excited
3 about the work that we are doing.

4 Staff prepared a draft set of Web pages
5 that would be included within our general Website, and
6 these Web pages would address the issue of anti-
7 Semitism on campuses. We circulated that for comment
8 to the Commissioners a couple of weeks back. We've
9 also asked for input from various outside groups.

10 In general, the responses that we have
11 gotten have been very favorable, and they have gotten
12 some very positive cudos to the staff for the quality
13 of work, which I think is great.

14 Staff is continuing to fine tune the Web
15 pages in response to some useful, constructive
16 criticism, and we will shortly circulate another draft
17 that is revised in response to the comments we've
18 received, and I would hope to have a proposed final of
19 those Web pages available for a vote during the next
20 Commission meeting.

21 In addition to the Web pages, the
22 Commission is aware that we have a poster that was
23 approved during the last meeting, and that the image
24 and language from the poster is also being used on a
25 postcard that the Commission previously directed the

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1 staff to prepare.

2 I'll circulate this, but the Commissioners
3 will see that the postcard has essentially the same
4 image and text as the poster. We've added the TDY
5 number for disabled persons as well as an E-mail
6 address for our complaint line. We'll probably
7 increase somewhat some of the text to make it more
8 legible.

9 So we will have the poster. We will have
10 this. We will be sending out E-mails and have gotten
11 requests to speak with various students and student
12 groups and faculty. So I would say at this point the
13 feedback that we're getting has been very positive.

14 CHAIRMAN REYNOLDS: Any questions or
15 comments?

16 (No response.)

17 **V. State Advisory Committee Issues**

18 CHAIRMAN REYNOLDS: Okay. Next up, we're
19 going to discuss the rechartering packages. We have
20 three. May I have a motion to recharter the Georgia
21 State Advisory Committee?

22 Under this motion the Commission appoints
23 the following individuals to that committee based on
24 the recommendations of the Staff Director:

25 Charles Tanksley

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1 Tony Boatwright
2 Alvin Culbreth
3 Julius Dudley
4 Herbert Garrett
5 Shannon Goessling
6 William Jordan
7 Ann Kasun
8 Luis Eguiarte
9 Arch Stokes
10 and Pamela White-Colbert

11 And with this motion, the Commission
12 appoints Charles Tanksley as the Chair of the newly
13 rechartered Georgia State Advisory Committee. These
14 members will serve as uncompensated government
15 employees, and the Commission, assuming that this
16 motion passes, will appreciate the hard work that they
17 will contribute to this SAC.

18 Under this motion, the Commission
19 authorizes the Staff Director to execute the
20 appropriate paper work for the appointment.

21 Is there a second?

22 COMMISSIONER MELENDEZ: Mr. Chairman, I
23 had a question, I believe at the last meeting. I had
24 a concern about the rechartering of especially
25 Connecticut, and I believe when we agreed to not block

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1 that on a notational voting, there was agreement that
2 we would discuss basically rechartering in general of
3 how that process actually works.

4 CHAIRMAN REYNOLDS: That's correct.

5 COMMISSIONER MELENDEZ: And maybe that
6 should be done before the vote on these.

7 CHAIRMAN REYNOLDS: Well, actually I
8 assumed that this would be the vehicle used --

9 COMMISSIONER MELENDEZ: Okay.

10 CHAIRMAN REYNOLDS: -- for that
11 discussion.

12 So is there a second?

13 COMMISSIONER YAKI: So moved.

14 CHAIRMAN REYNOLDS: Thank you.

15 A second?

16 COMMISSIONER BRACERAS: Second.

17 CHAIRMAN REYNOLDS: Discussion?

18 COMMISSIONER MELENDEZ: Okay. The whole
19 process on how the SACs are basically picked all the
20 way down was a concern that I had because when we did
21 look at the Connecticut SACs, there was a number of --
22 and basically I believe that the recharter decision
23 should avoid, you know, bias and that we should create
24 a diverse, active, and capable membership of the make-
25 up of the SAC.

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1 I do have a concern as to the process in
2 general. If a person were to basically want to be a
3 State Advisory Committee person, who would that
4 actually occur? Is it a top-down or bottom-up?

5 Because I know that even with the regional
6 directors not even being in place out in Western
7 Region, I believe, Mr. Pilla there is basically
8 holding down the fort. I think he's basically second
9 in command. I don't think some of the regions even
10 have directors.

11 As to how the names are actually put
12 forth, I know that the staff director has some
13 involvement in working with the different regional
14 directors as to how that list is put together, and in
15 looking at some of the rechararters, you know, some of
16 them basically lack number of women. I believe the
17 outcome of some of those actually have only two women
18 on some of the rechararters that we looked at in these
19 packages, and I think the question would be: is it
20 something that's basically determined within each
21 state or is it basically driven by the central office
22 here as to the list, you know, that goes out to the
23 different states?

24 Because I think that even the State
25 Advisory Committees themselves, they have no idea as

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1 to who's going to be sitting on their board. It's
2 probably somebody else making those recommendations.

3 I'm just thinking it should be bottom-up,
4 that the people within each respective state probably
5 can put forth names, or how would we as commissioners?
6 Are we supposed to be able to put forth names to these
7 rechartering because we would know basically some of
8 the regions or where we come from?

9 I just wanted to talk a little bit about
10 the process of getting a more diverse and well
11 rounded --

12 COMMISSIONER BRACERAS: And if I could
13 just speak sort of generally, and I know the Staff
14 Director can answer the specifics of the process.
15 You know, we do have rules in place, and we did revise
16 our policy for SAC selection and adopt a very specific
17 set of goals and objectives. So there are rules in
18 place.

19 At the time that we adopted those, our
20 goal was to have race and gender neutral criteria for
21 selection, obviously with the goal of viewpoint
22 diversity on the SACs, and with the goal that, you
23 know, all of the members are interested in and
24 committed to civil rights issues.

25 But our goal was to strive for viewpoint

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1 diversity and to have race neutral criteria because we
2 felt that, you know, we certainly didn't want to
3 allocate slots on the SACs by quota. So we
4 specifically sought to eliminate rules that might be
5 interpreted that way.

6 As for how individual members are
7 selected, I know in the past I've, you know, given a
8 name or two of somebody who I thought might be
9 interested. Marti Castro, who's on the list today for
10 Illinois, is somebody that I originally recommended.
11 You know, he's not from my political party. He's much
12 more liberal than I am. He's a community activist,
13 and somebody with whom I share a great interest in
14 issues that affect the Hispanic community, but
15 somebody with whom I often find myself disagreeing
16 with on political matters.

17 But I knew him to be a person committed to
18 civil rights issues and a person who would be
19 interested in serving, and so I passed his name along,
20 and I'm sure that any other Commissioner, you know,
21 should certainly feel free to do that.

22 But the Staff Director can speak more
23 specifically about the process, but just to address
24 your concern about whether there is a process, the
25 answer is yes, and I believe a very well thought out

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1 one.

2 And to answer your concern about
3 diversity, we have, you know, developed a policy
4 that's race and gender neutral.

5 COMMISSIONER MELENDEZ: But I guess you
6 only can have 11 people on each advisory board. Let's
7 say there's 17 that --

8 CHAIRMAN REYNOLDS: Is that true?

9 COMMISSIONER MELENDEZ: -- make
10 application, and we look at their resumes, which I
11 think should have something to do with their interest
12 in serving on civil rights because I read some of the
13 one in Georgia this morning, reading what their
14 interests are and their background and different
15 things, but the question would be how are those
16 actually selected because I know that doesn't seem
17 like the state advisory chairman or whether or not
18 there's five people still on the board and there's six
19 new people coming on, whether or not it's actually the
20 Regional Director that really basically makes a
21 decision narrowing it down from 16 to 11 people or is
22 it the staff director here or is it something that we
23 review the 15 and throw our ten cents into who the 11
24 should be?

25 That's what I'm kind of getting at as to

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1 who would make that decision so that it could be --
2 and I don't know if anybody really looked into it
3 before, but I'm just saying that it's kind of coming
4 to the forefront because these are basically four-year
5 terms now; is that right?

6 MR. MARCUS: That's correct.

7 COMMISSIONER MELENDEZ: Four-year terms as
8 opposed to two. So I think --

9 MR. MARCUS: No, I'm sorry. They remain
10 two-year terms, but we have a pending recommendation
11 to expand it to four-year terms.

12 COMMISSIONER MELENDEZ: It could end up
13 there. So I'm just saying I think we need to really
14 look at the process and be able to have input if
15 that's part of our role as Commission.

16 MR. MARCUS: I'd be happy to answer if I
17 may.

18 COMMISSIONER MELENDEZ: Sure.

19 MR. MARCUS: There is a very complicated
20 question. So I'll just try and take a stab at it and
21 I'd be happy to take follow-up as well.

22 We do have a process. As Commissioner
23 Braceras pointed out, it was extensively revised over
24 the course of the last year. So it's a newly reworked
25 process, and it's a process that now intends to be

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1 race and gender neutral and to bring in a wide range
2 of viewpoints and to bring fresh new perspectives into
3 the committees.

4 The members are appointed by the
5 Commission. The ultimate responsibility in the
6 selection is with the Commissioners. Commissioners
7 vote yes or no, and in the past occasionally
8 Commissioners would, if they were unsatisfied with the
9 proposals, would vote no and give recommendations that
10 the staff go back and find this or that. Sometimes
11 there were no Republicans or no this or not that.

12 The recommendations are made by the Staff
13 Director. So the Commission typically votes based on
14 the recommendations of the Staff Director.

15 As Staff Director, I rely on various staff
16 members to assist me in developing my recommendations.
17 The primary people that I rely upon are the regional
18 directors. We have six regions. We have four
19 regional directors. For those two regions where we do
20 not have regional directors, the Staff Director is the
21 de facto acting regional director.

22 But as Commissioner Melendez points out,
23 in each of those two regions, I have very active
24 senior analysts who are very helpful in coordinating
25 the process for me in those areas.

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1 The ways that we have looked at the SACs
2 vary little bit from state to state and region to
3 region. That has, in part, been based on the
4 different needs. For instance, we have some states
5 where we are building an entire committee from scratch
6 because we have no eligible incumbents.

7 In other states, we have only a small
8 number. so we have different things we need to look
9 at.

10 Where we have a number of incumbent
11 members who are being considered for reselection, we
12 have to look at what is their background and what is
13 needed in order to provide balance. For instance, are
14 they all of one party and do we need to get people of
15 another party in? Do they have the full range of
16 skill sets and backgrounds that we're looking for?

17 Generally speaking, I try to let the
18 different regional staff be as creative as they can
19 and proactive in putting together committees, but I am
20 concerned to instill a sense of urgency because I
21 think it is very important that we move ahead quickly.
22 As the Commissioner probably knows, under the old
23 process we almost never were rechartering SACs. Most
24 of the time most SACs were not chartered for as far
25 back as anyone in headquarters can remember. So we're

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1 trying to rectify that, even though we have fewer
2 resources and less money and staff.

3 We also did not have the sort of viewpoint
4 diversity that is called for under the new procedures.

5 In terms of my involvement, I've tried to
6 encourage and coach the regional staff. I have
7 encouraged Commissioners to provide recommendations to
8 me, and many Commissioners have provided some names.
9 Those who have, I thank you and I encourage you to
10 keep them coming.

11 For those of you who have not yet provided
12 any suggestions, I would encourage you to please let
13 me know who you are aware of, and as with any manager,
14 my degree of involvement in the different tasks
15 depends on a whole host of factors, including how much
16 time I have available, how well things are going in a
17 particular state, whether a subordinate specifically
18 asks for me to help, whether I think that there's a
19 particular need in a particular region to get more
20 involved, whether I think I have value to add.

21 The Connecticut SAC I think is an
22 excellent example of one that came together very well,
23 and I think that the Georgia SAC as well as other sacs
24 within that region are also a good example of
25 excellent staff work.

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1 COMMISSIONER MELENDEZ: Right. I guess
2 the question would be I think in the Connecticut SAC
3 there were a couple of women that seemed to be
4 qualified, you know. So let's take that scenario.
5 would that be something where a Commissioner would
6 basically lay it on the table and say, "Why weren't
7 these two women who seemed to be qualified not
8 included or selected?"

9 Basically I don't think we get down to
10 that type of inquiry or we haven't.

11 COMMISSIONER BRACERAS: I'm sorry. Women
12 who were considered but not selected?

13 COMMISSIONER MELENDEZ: But not selected.

14 COMMISSIONER BRACERAS: Or just women you
15 know about who had interest?

16 COMMISSIONER MELENDEZ: No, they were
17 actually -- I believe they were in the -- could have
18 been selected or appointed by Mr. Marcus or the
19 regional director.

20 MR. MARCUS: We had a number of people in
21 Connecticut whom we looked at. There were 15 that I
22 recommended. Commissioner Melendez, you pointed out
23 that we need to have 11 members. In fact, 11 is the
24 minimum. Nineteen is the maximum. We have tended for
25 our smaller states, in general, to have numbers that

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1 are closer to 11 and for larger often closer to 19.

2 The 15 that we chose I think were an
3 excellent, well balanced group. In addition to that
4 15, it is true there were a number of people that we
5 looked at, including both men and women. I think,
6 Commissioner, you may be referring to a couple of
7 women that the staff actually send my way. There were
8 also some very talented, interesting men. There was
9 one rabbi, a man who -- we didn't have a rabbi, and I
10 don't know that we've got a rabbi in any committee,
11 and he was very well known.

12 COMMISSIONER YAKI: We do.

13 MR. MARCUS: There were the --

14 COMMISSIONER BRACERAS: We do?

15 COMMISSIONER YAKI: Yeah, I remember
16 seeing him in one of them.

17 MR. MARCUS: Okay. A staff member was
18 enthusiastic about the idea of bringing in a rabbi.

19 There were a couple of women. There was
20 a professor, I think, at Yale, and there's nothing
21 wrong with any of these people. Any of them would
22 have been terrific. It was just a matter of if we
23 accepted all of them, it would have been too many,
24 which means of the expense sometimes of bringing them
25 all together, plus the burden, you know, in terms of

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1 the time constraints would have been too much.

2 In the ideal world I think I might have
3 gone for a number smaller than 15, but it was tough
4 cutting it beyond the 15. So it was just a matter of
5 getting as close as I could to 11 or 12, but trying to
6 get good balance, trying to get viewpoint balance, et
7 cetera, et cetera.

8 CHAIRMAN REYNOLDS: Commissioner Yaki.
9 I'm sorry.

10 COMMISSIONER YAKI: Go ahead. I'll let
11 Commissioner Melendez finish. I'm sorry.

12 COMMISSIONER MELENDEZ: And my main
13 concern is, you know, when we're talking about either
14 the top-down, which would basically be you from the
15 top basically setting forth a list out to the regional
16 directors or either the regional directors start
17 getting more involved because they know their certain
18 region and they basically send you a number, a list,
19 and basically you kind of concur with them whether or
20 not these are -- that would be the bottom-up approach.

21 So if the two women, for example, were put
22 forth by the regional director, I guess that would be
23 the bottom up approach.

24 COMMISSIONER BRACERAS: It's
25 discretionary. So it can go either way. The names

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1 can be generated by Commissioners or by the Staff
2 Director or members of his staff or by the regional
3 directors, and it's within his discretion. There's no
4 rule that requires him to accept the nomination of the
5 regional director or that requires him to accept my
6 suggestion. It's within his discretion, and that's a
7 process that we discussed at great length and voted
8 on, and so that's how it works.

9 CHAIRMAN REYNOLDS: Yeah, I just want to
10 add one thing. The ultimate decision is ours.

11 COMMISSIONER BRACERAS: Right. We vote as
12 a body, collectively.

13 CHAIRMAN REYNOLDS: Commissioner Yaki.

14 COMMISSIONER YAKI: I just want to go on
15 the record as to why I had a problem with Connecticut,
16 and I appreciate what the Staff Director has said. My
17 issue though is that I find it hard to understand that
18 diversity of viewpoint includes three people in the
19 executive board of one organization, which is the
20 Yankee Institute for Public Policy, comprising 30
21 percent or three out of ten of the new nominees.

22 I have an issue with the fact that the
23 number of women is so low. Yes, you can be race and
24 gender neutral, but I think we should also understand
25 that especially for the State of Connecticut and its

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1 place in the history of Supreme Court jurisprudence,
2 having a SAC that is at present 87 percent men and 13
3 percent women is something that should put up red
4 flags right away.

5 And then finally, and I am going to say
6 this as politely as I can, but I don't know if I'm --

7 CHAIRMAN REYNOLDS: Remember that you
8 haven't had much sleep.

9 COMMISSIONER YAKI: No, but I have triple
10 screened this so far, but I still don't know if it's
11 going to come out right.

12 I have a very, very deep issue what a
13 member of the new SAC is someone who heads an
14 organization that is unalterably opposed to the idea
15 of (pause) --

16 COMMISSIONER BRACERAS: What is the
17 organization?

18 COMMISSIONER YAKI: -- of same sex unions,
19 the Family Institute of Connecticut. I think that
20 this is an organization whose Website I perused, who
21 I believe and, in fact, I hope one day -- I don't know
22 when that will be -- but I hope one day if I am still
23 a member of the Commission we would have a discussion
24 about the civil rights or lack thereof for the gay and
25 lesbian, transgender community, but I have --

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1 COMMISSIONER BRACERAS: That's not within
2 our statutory mandate.

3 COMMISSIONER YAKI: Neither was -- neither
4 were the rights of the disabled until we put out a
5 report on the people that dealt with the challenges
6 faced by people with disabilities.

7 COMMISSIONER BRACERAS: I think that is
8 part of our statutory mandate, isn't it?

9 CHAIRMAN REYNOLDS: I think it is.

10 COMMISSIONER YAKI: I think that --

11 CHAIRMAN REYNOLDS: I think he's making a
12 different point, but at one point it wasn't. I
13 believe that --

14 COMMISSIONER YAKI: No, it was not. It
15 was not.

16 MR. MARCUS: I have to say there are
17 issues related to the gay and lesbian community that
18 are fairly within our jurisdiction.

19 COMMISSIONER YAKI: And in this we have
20 someone who advocates and rates legislators, puts out
21 bulletins, et cetera, that is unalterably opposed to
22 the rights of same sex unions, and that person is now
23 in our SAC, and I have a very severe problem with
24 that.

25 CHAIRMAN REYNOLDS: Are you suggesting

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1 that that person should have been disqualified,
2 especially in light of the fact that there are many
3 Americans who share his view?

4 COMMISSIONER YAKI: Well, we really don't
5 want to go down that road, do we?

6 CHAIRMAN REYNOLDS: Oh, no, I'm just
7 asking you a question. Do you believe that someone
8 who is opposed to same sex marriage is ineligible to
9 serve in a SAC?

10 COMMISSIONER YAKI: I think I'm not saying
11 that. I would say for me, I would have asked to have
12 a separate vote on him. And, again, I don't think we
13 want to go down a road that says, well, a majority of
14 Americans may not believe these people or those people
15 deserve these kinds of rights. That's not a place for
16 me to be.

17 COMMISSIONER BRACERAS: I don't know if
18 that's what the Chairman was saying.

19 CHAIRMAN REYNOLDS: A fully informed
20 debate having all of the viewpoints represented, and
21 I don't see how we can have a fully fleshed out debate
22 unless all of the voices are presented.

23 COMMISSIONER YAKI: So does that mean that
24 in 1957 the Civil Rights Commission should have had an
25 unalterable segregationist as part of us?

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1 CHAIRMAN REYNOLDS: I think that all --

2 COMMISSIONER YAKI: Is that what you're
3 saying, Mr. Chair?

4 CHAIRMAN REYNOLDS: I am saying --

5 COMMISSIONER YAKI: Because if that's what
6 you're saying --

7 CHAIRMAN REYNOLDS: No, no, no.

8 COMMISSIONER YAKI: -- then --

9 CHAIRMAN REYNOLDS: Let me tell you what
10 I'm saying. I am saying that all viewpoints should be
11 heard, and there is no point of view that should be --

12 COMMISSIONER YAKI: Viewpoints --

13 CHAIRMAN REYNOLDS: -- eliminated from the
14 discussion.

15 COMMISSIONER YAKI: -- can be heard, but
16 to be a member of the SAC, to be a member of the Civil
17 Rights Commission family, I have a very, very deep
18 problem with that, and that is my personal point of
19 view.

20 I'm not imposing it upon you. I'm not
21 asking you to adopt it. I'm simply saying that I am
22 very proud of the fact that in my history as a
23 legislator I participated in civil unions in terms of
24 officiating at them. I come from a city that embraces
25 that kind of diversity, and it would be anathema for

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1 me not to express my objection to inclusion of someone
2 of that mindset as a member of the Connecticut SAC.

3 CHAIRMAN REYNOLDS: Commissioner Taylor.

4 COMMISSIONER TAYLOR: A process question.
5 Since this is our decision, are we limited to voting
6 on a slate when we are receiving recommendations from
7 the Staff Director?

8 CHAIRMAN REYNOLDS: No. I think that any
9 -- if there's an individual --

10 COMMISSIONER TAYLOR: Right.

11 CHAIRMAN REYNOLDS: -- that someone has a
12 particular problem with, that they could vote against
13 that particular individual.

14 COMMISSIONER TAYLOR: Well, from my
15 perspective at least, all of the concerns raised, I
16 think we have a forum to address all of them. That
17 is, when the particular SAC is brought to the table
18 for a vote, if we're not required to accept the entire
19 slate recommendations, we can do exactly what
20 Commissioner Yaki would like to do in this case, focus
21 on individuals, their backgrounds, and question them,
22 and I think that's a good debate to have, and I sense
23 we're a tempest in a teapot here because we have a
24 process in place to have these very discussions on
25 particular SACs, but I don't hear any concern related

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1 to the Georgia SAC, which I thought was the motion on
2 the table.

3 CHAIRMAN REYNOLDS: That's true, but
4 Commissioner Yaki wanted to express his views on
5 certain aspects of the Connecticut SAC, and --

6 COMMISSIONER TAYLOR: Which we had agreed
7 to as part of our discussion.

8 PARTICIPANT: Which I don't want -- if
9 it's a procedural defect, then it would apply to this
10 Georgia discussion, but if it's not a procedural
11 defect, then I don't want us to lose track of where we
12 are on particular SACs, and we can focus on the
13 Georgia SAC when it comes up or the Connecticut SAC
14 when it comes up.

15 PARTICIPANT: Well, so long as there is an
16 understanding we have a process in place to address
17 the concerns Commissioner Yaki has raised.

18 CHAIRMAN REYNOLDS: Okay. Additional
19 questions, comments?

20 COMMISSIONER MELENDEZ: Just a final
21 comment from myself, and the reason I raise this is
22 because, you know, it's the discretion of the Staff
23 Director playing a big role in the whole process. I
24 just wanted to let him know that, you know, we're
25 going to be looking at that, and if the process can be

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1 so that we can have input into questionable people on
2 there like we've discussed here, that would be, you
3 know, something we would like to do or, you know, to
4 make sure that -- I'm just trying to make sure that
5 it's well balanced, you know, so that we don't
6 question if it's stacked along party lines or whatever
7 was brought up or whether or not we don't have enough
8 women, and that's my main concern.

9 And so that I just wanted to just bring it
10 to the forefront so that we could have the discussion
11 on it and make sure that we could have input into the
12 SACs.

13 I think we're so busy that sometimes if we
14 just kind of rubber stamp the SACs the way it has been
15 going, but I think that we're going to be -- and I
16 know that we have a number of SACs we still have to
17 recharter. So we've only touched base with some of
18 those. So even if it's in the middle of the process,
19 I think we still need to kind of take into account
20 that there are issues there, and if we can streamline
21 the process or get more input, and that's the reason
22 we brought it up.

23 MR. MARCUS: Commissioner, I welcome your
24 involvement and share your concern about trying to get
25 the proper balance and want to take the invitation

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1 that I've given to all of the Commissioners and make
2 it especially to you that if there are people that you
3 have in mind also or are concerned, please don't
4 hesitate to give me a call and let me know. I'd be
5 happy to work with you.

6 CHAIRMAN REYNOLDS: And there's very few
7 decisions made around here where we don't rely on the
8 Staff Director's judgment. In my view the Staff
9 Director's judgment has been sound, but more
10 importantly, there is a checks and balance system in
11 place. We are the ultimate arbiters of what goes on
12 around here.

13 Okay. If there are no additional
14 questions or comments, all in favor of --

15 COMMISSIONER YAKI: Wait, wait, wait. On
16 Georgia?

17 CHAIRMAN REYNOLDS: That's correct.

18 COMMISSIONER YAKI: I have a problem --
19 I'd just like to raise a question about one nominee.

20 CHAIRMAN REYNOLDS: Which one?

21 COMMISSIONER YAKI: Mr. Stokes. I find it
22 very interesting -- I find it very bizarre that
23 someone would say that discrimination is not a
24 Democrat or a Republican issue, blah, blah, blah,
25 blah, blah. "Civil rights should not be used as

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1 either a wedge issue and easy to score political
2 points. It should be conducted in a manner similar to
3 the building of our nation's highways."

4 What the heck does that mean?

5 CHAIRMAN REYNOLDS: Okay. Well --

6 COMMISSIONER YAKI: I mean, I'm serious.
7 If someone thinks that civil rights should be
8 conducted in a manner similar to the building of our
9 nation's highways, I don't think that person should be
10 on a SAC because I don't think that person understands
11 what in the heck they're talking about.

12 CHAIRMAN REYNOLDS: Well, I think we agree
13 with this individual and that civil rights is not a
14 Republican or Democratic issue.

15 COMMISSIONER YAKI: But should it be
16 conducted in a manner similar to building our nation's
17 highways?

18 CHAIRMAN REYNOLDS: Well, I will admit --

19 COMMISSIONER BRACERAS: It's not the most
20 artful description, but I think he's trying to say
21 it's an American issue. It's not a --

22 CHAIRMAN REYNOLDS: Right.

23 COMMISSIONER TAYLOR: It thought he was
24 trying to say it should be filled by the lowest
25 bidder.

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1 (Laughter.)

2 CHAIRMAN REYNOLDS: And then he's
3 suggesting that there are certain ambiguities with
4 that piece of --

5 COMMISSIONER YAKI: In that case, with a
6 big dig there is no end to it.

7 CHAIRMAN REYNOLDS: If you're suggesting
8 there are certain ambiguities involved in that piece
9 of the statement, I agree, but I don't think that that
10 disqualifies this individual.

11 Are there any other individuals you would
12 like to discuss?

13 COMMISSIONER YAKI: No, for now.

14 CHAIRMAN REYNOLDS: The whole slate,
15 either the whole slate or Stokes?

16 COMMISSIONER YAKI: No, I don't care. I
17 mean, again, you know, 73 percent men, 27 percent
18 women. I mean, it's just out of whack.

19 CHAIRMAN REYNOLDS: So the whole slate --

20 COMMISSIONER BRACERAS: But we
21 specifically established a policy to avoid bean
22 counts.

23 COMMISSIONER YAKI: Of course, of course,
24 but 73/27? I mean you can do better getting socks out
25 of a drawer in a random thing than doing that.

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1 COMMISSIONER KIRSANOW: Just as a matter
2 of curiosity, what was the expression of interest in
3 terms of those who apply to these SAC members? Was
4 there a 50-50 split between men and women who wanted
5 to be SAC members or, you know, what was the pool?

6 COMMISSIONER YAKI: Well, we already know
7 that in Connecticut there were many more women
8 nominated than were chosen.

9 MR. MARCUS: I wouldn't agree with that
10 characterization.

11 COMMISSIONER BRACERAS: I thought he said
12 two.

13 MR. MARCUS: There were a couple of women
14 who weren't chosen. There were at least a couple of
15 men who weren't chosen, and perhaps more than that.

16 COMMISSIONER YAKI: I think the SAC chair
17 said that he nominated -- he suggested more than a
18 couple. Anyway.

19 COMMISSIONER KIRSANOW: And I state that,
20 of course, on the premise that, you know, I don't
21 believe we should be bean counting, and I wouldn't
22 necessarily revise my vote depending on what the
23 response is. It's just a matter of curiosity. I
24 don't necessarily think that we can look at the
25 outcome and say 73 percent men and somehow that's

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1 flawed until we know, you know, was there some type of
2 affirmative discrimination against women.

3 COMMISSIONER BRACERAS: But you need to
4 know the full --

5 MR. MARCUS: Here's what I can say.

6 COMMISSIONER YAKI: Eighty-seven, 13, 73,
7 27, 68, 35. That's a pattern and practice to me.

8 CHAIRMAN REYNOLDS: Oh, come on how.

9 COMMISSIONER BRACERAS: Oh, please.

10 COMMISSIONER YAKI: Come on. Seriously.

11 CHAIRMAN REYNOLDS: Come on now. You're
12 not --

13 COMMISSIONER BRACERAS: You can't have a
14 pattern and practice without knowing what the pool is.
15 You can't just look at the results.

16 COMMISSIONER YAKI: Well, then we need --
17 then all I can do is look at the numbers. If I don't
18 know what the pool is, if I don't know what the
19 outreach was, if I don't know what --

20 COMMISSIONER BRACERAS: So you just want
21 proportional representation.

22 COMMISSIONER YAKI: -- how it was done.

23 COMMISSIONER BRACERAS: I'm saying that
24 you can surely do a heck of a lot better than three to
25 one.

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1 COMMISSIONER BRACERAS: If you have a
2 substantive problem with any of these SAC members,
3 then --

4 COMMISSIONER YAKI: I have lots of
5 substantive problems with a lot of --

6 COMMISSIONER BRACERAS: Then raise them.
7 Then raise them.

8 COMMISSIONER YAKI: -- a lot of these SAC
9 members.

10 COMMISSIONER BRACERAS: But the fact that
11 they're not the right sex is -- I'm not even going to
12 address that.

13 COMMISSIONER YAKI: Well, I'm surprised
14 you wouldn't address it. I would be very -- I think
15 that -- I think that if the Civil Rights Commission is
16 supposed to be a body that -- well, that gets into the
17 whole philosophical issue.

18 COMMISSIONER BRACERAS: And we had that
19 discussion when we voted on the SAC rules.

20 COMMISSIONER YAKI: Which, of course, I
21 opposed, but I just think you can say a lot about
22 blindness, neutrality, what have you, but I'm just
23 telling you that the numbers are completely out of
24 whack.

25 CHAIRMAN REYNOLDS: Well, you mentioned a

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1 philosophical difference, and there is.

2 COMMISSIONER YAKI: So if these SACs were
3 99 percent Caucasian, you have no problem with it.

4 CHAIRMAN REYNOLDS: Or 100 percent women.
5 I want to know what they think. I want to know what
6 their views are. I want to insure that there is a
7 diversity with respect to ideas. That is the
8 important thing.

9 COMMISSIONER YAKI: Well, we seem to have
10 a lot of people from the Federalist Society in all of
11 these things.

12 CHAIRMAN REYNOLDS: Well --

13 COMMISSIONER YAKI: We had three Yankee
14 Institute in one SAC in one state for ten nominees.
15 Where is the diversity? Where is --

16 COMMISSIONER BRACERAS: Can I just be
17 perfectly clear about something on the record --

18 CHAIRMAN REYNOLDS: Hold on here.

19 COMMISSIONER BRACERAS: -- about the
20 Federalist Society?

21 CHAIRMAN REYNOLDS: Hold on, hold on, hold
22 on. If you look at the ideological diversity of the
23 SACs, you don't have much. You don't have many
24 members from the Federalist Society or the Yankee
25 Institute. By putting them on these SACs, we are

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1 achieving diversity, the diversity that we sorely lack
2 today.

3 So there is no surprise that there is a
4 spike in the number of members from, say, the
5 Federalist Society, for example, because that
6 viewpoint, that point of view is not currently
7 represented on the majority of SACs.

8 COMMISSIONER BRACERAS: Let me just speak
9 to that because I think there's some confusion. The
10 Federalist Society doesn't take positions on issues.
11 There is no Federalist Society viewpoint. There never
12 was; there never will be. It's a Bar Association of
13 generally conservative and libertarian lawyers who
14 sometimes have wildly different views from each other
15 on things like the War on Terror and other issues, and
16 it's basically a forum for ideas and for circulating
17 conservative and libertarian ideas. There are no
18 platforms. Unlike the ACLU, unlike even the American
19 Bar Association, the Federalist Society does not take
20 positions on issues.

21 So to say that somebody is a member of the
22 Federalist Society and, therefore, you know, shouldn't
23 be a member of a SAC or it's disturbing that they are
24 a member of a SAC --

25 COMMISSIONER YAKI: I'm not disturbed that

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1 they're members of a SAC.

2 COMMISSIONER BRACERAS: It tells me --

3 COMMISSIONER YAKI: I am disturbed -- I am
4 disturbed that of the new nominees there seems to be
5 a preponderance or a disproportion of reliance upon
6 certain organizations for the membership of a new SAC.
7 I mean --

8 COMMISSIONER BRACERAS: Well, the
9 Federalist Society --

10 COMMISSIONER YAKI: Look, Jennifer --
11 Commissioner Braceras. We're not going to agree on
12 this. This goes into the philosophical red state-blue
13 state and --

14 COMMISSIONER BRACERAS: That's fine, but
15 I just want to be clear on the record that membership
16 in the Federalist Society tells you nothing about
17 somebody's (a) political affiliation or (b)
18 ideological views, other than the fact that they
19 generally believe in the principles of limited
20 government and judicial restraint. Other than that it
21 tells you nothing.

22 COMMISSIONER YAKI: Well, let me just tell
23 you something, that the views of limited government
24 and judicial restraint and the number of federalists
25 whom I've encountered in my lifetime lead me to

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1 believe that I pretty much know where they're going to
2 land on most issues. So, yes, you -- and -- and --
3 and I can say the same thing about --

4 COMMISSIONER BRACERAS: -- are members of
5 the Federalist Society.

6 COMMISSIONER YAKI: -- anyone in the ACLU.
7 I can say that about people in the American Bar
8 Association. We can sit here all we want and say
9 that, but the fact is people associate with different
10 groups for various reasons. They wish to do so
11 because the association is in itself part of who and
12 what they are.

13 So, yes. I mean, fine. You know, pile in
14 all of the federalists and Cato and everyone else and
15 AEI and whoever.

16 CHAIRMAN REYNOLDS: We will now have
17 diversity.

18 COMMISSIONER YAKI: But, you know, at the
19 end of the day when you have folks whose entire point
20 of view is to oppose civil rights or civil liberties,
21 then I have an issue.

22 And, you know, rather than go into --

23 COMMISSIONER BRACERAS: And what evidence
24 do you have that any of these people oppose civil
25 rights and civil liberties?

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1 COMMISSIONER YAKI: Well, I've already
2 given you one about one in Connecticut, and I'm sure
3 if I did a lot of extra research, which I don't have
4 the time to do nor an assistant to do, on some of the
5 new nominees, I could come up with writings. But I
6 can tell you for sure that when it comes to
7 California, I've got a lot of stuff on a lot of the
8 people there, and I will bring it up, each and every
9 one.

10 COMMISSIONER BRACERAS: And that's fine,
11 but I just --

12 CHAIRMAN REYNOLDS: -- you will come
13 loaded for bear for that discussion, I am sure.

14 COMMISSIONER BRACERAS: I just want to say
15 that, you know --

16 COMMISSIONER YAKI: I can't sit here and
17 want to, nor would I be, you know, for all of these
18 different states. I agree with Commissioner Melendez.
19 I think there is a process issue. I think the issue
20 of --

21 COMMISSIONER BRACERAS: We have a process.
22 You just don't like it.

23 COMMISSIONER YAKI: Yeah, pretty much.

24 COMMISSIONER BRACERAS: But don't say, you
25 know, you're wondering what the process is and is

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1 there a process and there doesn't seem to be a
2 process.

3 COMMISSIONER YAKI: No, no, no, no.

4 COMMISSIONER BRACERAS: There's a process.
5 We voted for it.

6 COMMISSIONER YAKI: No, that's not true.
7 The process by which the actual members are --

8 COMMISSIONER BRACERAS: There are
9 criteria.

10 COMMISSIONER YAKI: No, there are criteria
11 for the individual members. The process by which the
12 pool is created is what Commissioner Melendez has
13 raised, which I agree with and where I believe the
14 Commission can and should do better. You know, I'm
15 sorry, but the idea that -- I'm going to come straight
16 back to it -- the idea that we're rolling through a
17 bunch of SACs today where the ratio of men to women is
18 three to one just doesn't scour for me.

19 COMMISSIONER BRACERAS: What's the ratio
20 on this Commission?

21 CHAIRMAN REYNOLDS: I under --

22 COMMISSIONER BRACERAS: Do you want to
23 resign your seat and let someone else step in?

24 COMMISSIONER YAKI: No, because I'm the
25 only Asian.

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1 CHAIRMAN REYNOLDS: Commissioner Yaki --

2 COMMISSIONER YAKI: I'm not going to give
3 that up.

4 COMMISSIONER BRACERAS: Well, but these
5 people bring other things to the table, too, just as
6 you bring your ethnicity to the table. These other
7 people may not bring the right sex to the table, but
8 they bring other things. That's the very point.

9 CHAIRMAN REYNOLDS: The bottom line is --

10 COMMISSIONER YAKI: Let me just say this.
11 If I had the appointment power, it would be a lot
12 different.

13 CHAIRMAN REYNOLDS: -- that after our
14 process, in my view it is going to result in SACs that
15 have a greater amount of diversity in terms of
16 viewpoint. Just doing a before and after picture,
17 what did the world look like before these SACs were
18 reconstituted and now?

19 And I think that it is clear that these
20 SACs will have viewpoints that you may not like, but
21 are shared by many Americans, and so we will be able to
22 engage in fully fleshed out debates, and I think
23 that's a good thing.

24 COMMISSIONER KIRSANOW: Mr. Chair, I just
25 want an answer to my question. During the course of

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1 the selection of SAC members, was anyone rejected or,
2 in contrast, was anyone placed onto the SAC on the
3 basis of race, sex, national original, color,
4 disability or other --

5 CHAIRMAN REYNOLDS: I want to know, too.

6 MR. MARCUS: Certainly, to the best of my
7 knowledge, no. I Have to say there is one candidate
8 who is on this who I recommended who I thought was an
9 African America and later found out -- and I don't
10 recall exactly why I had that impression.

11 COMMISSIONER KIRSANOW: Is that the guy
12 from Steinfeld?

13 MR. MARCUS: Pardon?

14 COMMISSIONER KIRSANOW: Is that the guy
15 from Steinfeld?

16 COMMISSIONER TAYLOR: There are no African
17 Americans on Steinfeld.

18 COMMISSIONER KIRSANOW: I mean the guy who
19 Elaine was dating that she felt was African American
20 and then he thought she was Hispanic and --

21 COMMISSIONER BRACERAS: Oh, he thought
22 Elaine was Hispanic?

23 COMMISSIONER KIRSANOW: Yes.

24 CHAIRMAN REYNOLDS: The conversation is
25 degenerating.

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1 COMMISSIONER KIRSANOW: It is, but you
2 know.

3 MR. MARCUS: He later found out he was
4 white --

5 CHAIRMAN REYNOLDS: Are you aware --

6 MR. MARCUS: -- but, of course, couldn't
7 make a changed my mind based on that. So to the best
8 of my knowledge, no one was either excluded or
9 included on any of those bases.

10 We did reach out to a number of
11 organizations that have particular connections to
12 either gender or race or different sorts of
13 constituencies. We reached out, for instance, to the
14 League of Women Voters and La Raza, the Southern
15 Christian Leadership Conference, the NAACP, the Martin
16 Luther King Center, the Jimmy Carter Center, the
17 African Literacy Program and, yes, the Federalist
18 Society and the Georgia Public Policy Institute as
19 well as several colleges.

20 PARTICIPANT: So you had outreach. There
21 was no discrimination on the basis of any of the
22 immutable characteristics that I mentioned, and this
23 is what we came up with.

24 MR. MARCUS: that's right.

25 COMMISSIONER MELENDEZ: I just had a

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1 comment in maybe closing the comments, but I think
2 that maybe our outreach needs to be enhanced to
3 some -- you know, I think when I look at it, I had
4 even the Native Americans asking me how do you get on
5 Civil Rights, even the State Advisory committee, and
6 I really didn't have an answer for that because I was
7 kind of worrying about the process.

8 CHAIRMAN REYNOLDS: Just give me the
9 names.

10 COMMISSIONER BRACERAS: Submit the names.

11 COMMISSIONER MELENDEZ: Yeah, but see, I
12 think the outreach needs to be if that's part of our
13 strategic goals, is to outreach to enhancing State
14 Advisory Boards. I think that maybe more work has to
15 be done there.

16 CHAIRMAN REYNOLDS: Well, looking at the
17 organizations that he just rattled off, it appears as
18 if it was a wide net that was cast and we can always
19 do a better job. So when we start our process, if any
20 Commissioner had an organization that they want to
21 insure is considered or reached to, by all means,
22 contact the Staff Director.

23 COMMISSIONER YAKI: Mr. Chair, what I
24 would request of the Staff Director is that I would
25 like a list of those SACs for which there is currently

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1 undergoing outreach for new members, and I would also
2 like the cutoff dates by which those applications
3 should be applied, and if there are any currently in
4 the process of being reviewed that is not too
5 untimely, I'd like the opportunity to see whether or
6 not names could be suggested for them.

7 But part of the issue, quite frankly, is
8 not just her, give me a name, throw me a name,
9 whatever a name is. Let me just reiterate. We are
10 part time. I have no assistant. We all have our own
11 work to do. It would help focus efforts a lot better
12 if I knew that in two months Washington or -- no, we
13 did Tennessee -- you know, or whatever is coming up
14 down the pipeline. These are the deadlines, blah,
15 blah, blah. That would help focus attention on that
16 better than sort of a scattered shot. Well, who do I
17 know and whatever, whatever, whatever?

18 MR. MARCUS: Well, may I suggest this,
19 Commissioner Yaki? There are a number where it's
20 imminent, where it's sort of too close because we've
21 already been working very --

22 COMMISSIONER YAKI: Who are they?

23 MR. MARCUS: But for -- who are they?

24 COMMISSIONER YAKI: Yes.

25 MR. MARCUS: The ones that were really

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1 close, of course, California is on the table.

2 COMMISSIONER YAKI: I don't think you're
3 close at all on that one.

4 MR. MARCUS: I think we're very close with
5 Virginia, with Maryland, with Arizona. I hope we're
6 close with Wyoming. Those are the ones we're very
7 close.

8 And when I say "very close," once we have
9 a name, it can take many months in order to get the
10 paper work done. So those ones are very close, but
11 the ones that we're not quite that close where it
12 would be great to get additional names would be ones
13 like --

14 COMMISSIONER YAKI: Well, rather than say
15 it, I think an E-mail would be great to go out with
16 the deadlines because that would make it a lot easier.

17 CHAIRMAN REYNOLDS: Yeah, and we wouldn't
18 have to --

19 MR. MARCUS: That's fine.

20 CHAIRMAN REYNOLDS: Yeah, I think that
21 that's a good idea.

22 Are we ready to vote on the Georgia SAC?
23 All in favor of the motion, please say aye.

24 (Chorus of ayes.)

25 CHAIRMAN REYNOLDS: Objections?

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1 Abstentions?

2 COMMISSIONER YAKI: Oh, objections? You
3 mean no votes? No.

4 COMMISSIONER MELENDEZ: I abstain.

5 COMMISSIONER YAKI: I'm voting no.

6 CHAIRMAN REYNOLDS: Okay. So let the
7 record reflect that --

8 COMMISSIONER TAYLOR: He obtained.

9 CHAIRMAN REYNOLDS: Oh, you or --

10 COMMISSIONER TAYLOR: He obtained.

11 CHAIRMAN REYNOLDS: Yes. Please let the
12 record reflect that Commissioner Melendez abstained.
13 Commissioner Yaki votes against the Georgia slate.
14 The motion carries.

15 Next up is the recharter package for the
16 Illinois SAC. May I have a motion to recharter the
17 Illinois State Advisory Committee?

18 Under this motion the committee appoints
19 the follow individuals to that committee based on the
20 recommendations of the Staff Director:

21 Barbara Abrajano

22 Nancy Adrade

23 David Baker

24 Martin Castro

25 Sonny Chico

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1 Yvonne Coleman

2 Louis Goldstein

3 Sandra Jackson

4 This is a challenge. Ultra Mandrite

5 (phonetic) Demetri Kantzavelos

6 Herbert Morton

7 John Mauck

8 Cameron Memon

9 Gordon Quinn

10 Cynthia Shawamreh

11 Betsy Shuman-Moore

12 Anthony Sisneros

13 Lee Walker

14 And Farhan Younus

15 With this motion, the Commission appoints
16 Lee Walker as the chair of the newly rechartered
17 Illinois State Advisory Committee. These members will
18 serve as uncompensated government employees, and the
19 Commission appreciates the hard work that they will no
20 doubt contribute assuming that this motion passes.

21 Under this motion, the Commission
22 authorizes the Staff Director to execute the
23 appropriate paper work for the appointment.

24 Anyone in support of this motion?

25 COMMISSIONER MELENDEZ: I have a question.

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1 Do you need a second before we discuss?

2 PARTICIPANT: So moved.

3 CHAIRMAN REYNOLDS: I would prefer -- and
4 is there a second?

5 COMMISSIONER TAYLOR: Second.

6 CHAIRMAN REYNOLDS: Thank you.

7 COMMISSIONER MELENDEZ: Yes, again, along
8 the same lines of what we're talking about, I believe
9 that the regional staff person had recommended Mr.
10 Castro, you know, within that region, and I believe
11 Mr. Marcus had basically decided on Mr. Walker, who is
12 a Republican. So I'm just saying the whole issue just
13 seems to be along party lines as far as stacking some
14 of these, and that's a good example of where from the
15 bottom up you will get a recommendation. Unless you
16 have a valid reason why --

17 CHAIRMAN REYNOLDS: How as it stacked?

18 COMMISSIONER MELENDEZ: I mean, I'm just
19 saying --

20 CHAIRMAN REYNOLDS: What's the ratio of --

21 COMMISSIONER BRACERAS: The chairman has
22 to be from one part or the other. So is it stacked
23 either way?

24 COMMISSIONER MELENDEZ: But I'm just
25 saying, well, give us a good reason why the

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1 recommendation coming from the region -- you would
2 think that unless you know him better than the
3 regional person who is in that area --

4 CHAIRMAN REYNOLDS: Well, I do. He's my
5 pick. I know Lee Walker for quite a long time. He's
6 been involved in the civil rights movement for a long
7 time. He marched with Abernathy and company. He runs
8 a coalition out of Chicago. He's a big supporter of
9 school choice.

10 I think that he would be a fantastic
11 chairman, and that's why I recommended him.

12 COMMISSIONER MELENDEZ: So what --

13 CHAIRMAN REYNOLDS: The imbalanced
14 chair --

15 COMMISSIONER MELENDEZ: So what would be
16 wrong with Mr. Castro then? Do you have to basically
17 come up with why wouldn't you go with the
18 recommendation of their regional director in that
19 area?

20 MR. MARCUS: May I address that?

21 COMMISSIONER MELENDEZ: Sure.

22 MR. MARCUS: I got the packet from the
23 regional director which had various recommendations,
24 including Mr. Castro for chair. I looked at all of
25 the different recommendations, and considering each

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1 potential person for chair as well as Mr. Castro.
2 Given that Mr. Castro was the recommendation of the
3 director, he was sort of the first person I looked at,
4 but I also wanted to look at others.

5 I asked the regional director for the
6 reasons why he rather than anyone else, and one of the
7 leading recommendations was that it was because it was
8 a Commissioner recommendation. Because Commissioner
9 Braceras had mentioned him, that sort of gave him an
10 advantage, and there were one or two other things that
11 she mentioned also.

12 Walker was someone who I knew also had
13 Commissioner recommendation, although that
14 Commissioner recommendation might not have been known
15 to the regional director.

16 I called both of them. I called both
17 Castro and Walker, and I had several days before the
18 mail-out to get a response and to talk to both of
19 them. Walker I was able to talk to and had a very
20 good conversation. I knew a little bit of his
21 background. I had the recommendation from the Chair
22 and from my discussion of him and what I had seen from
23 others and talking to the regional director, he seemed
24 to have the level of commitment and energy to be a
25 very good chair.

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1 Mr. Castro did not return my phone call
2 during that period. Now, I later heard that he was on
3 travel, and he more recently returned my call, and so
4 now we're playing phone tag, but the main reason that
5 I wasn't able to go with him was that I wasn't able to
6 communicate with him.

7 One thing I find with State Advisory
8 Committees is that the members are often difficult to
9 contact, just as Commissioners are, because they have
10 other jobs, and so I try to be persistent in trying to
11 reach people.

12 On the other hand, all else being equal,
13 the ability to reach someone who is supposed to be the
14 eyes and ears in the Commission certainly weighs in
15 favor of them. So that together with the different,
16 very positive things that I had been hearing from Mr.
17 Walker sort of weighed in favor of Mr. Walker.

18 But I would want to emphasize that I've
19 heard only good things about Mr. Castro as well, and
20 hope that he continues to serve as a valued member of
21 the committee.

22 COMMISSIONER BRACERAS: I mean, with all
23 due respect, Marti Castro is fabulous, and he was my
24 recommendation for the SAC, and had he been selected
25 as chair, I'd be thrilled with that. But I'm willing

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1 to defer to the Staff Director's discretion, and if
2 both of these individuals are good people for the
3 post, then as between the two, the Staff Director's
4 decision that accessibility -- I'm sorry?

5 COMMISSIONER YAKI: Nothing.

6 CHAIRMAN REYNOLDS: Just a shot.

7 COMMISSIONER BRACERAS: What did he say?

8 CHAIRMAN REYNOLDS: Oh, no, nothing. Just
9 he's a Republican..

10 COMMISSIONER YAKI: No, I said, "Pick the
11 Republican."

12 CHAIRMAN REYNOLDS: "Pick the Republican."

13 COMMISSIONER BRACERAS: The bottom line is
14 I would have been happy either way, and I'm willing to
15 leave that decision to the Staff Director. I would
16 have been thrilled to see Marti Castro as chair, but
17 I'm not going to oppose it just because --

18 COMMISSIONER MELENDEZ: Right, and I don't
19 have a problem with the authority of the Staff
20 Director being the final say, you know what I mean?
21 But what I'm saying is as you know, when we first
22 started discussing the SACs and I also recommended
23 that we kind of include that in the strategic plan,
24 and you also know what was said about us, and it
25 almost sounds like they were saying that they're kind

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1 of left out, that their decisions don't mean anything,
2 and it probably goes to the regional officers, too.

3 I'm just saying that at some point we
4 might want to, wherever they make the recommendation,
5 we might want to support that recommendation.
6 Otherwise if we keep overriding that recommendation,
7 then we'll probably get more letters from people
8 saying that this is a top-down, do as we say, and we
9 don't care about what the SACs say or what the
10 regional directors say.

11 That's my only point, and you know, even
12 though we brought these up as certain issues, I just
13 want us to be aware of that whole bigger picture as we
14 move forward.

15 CHAIRMAN REYNOLDS: Well, I think it is
16 important that we entertain seriously the suggestions
17 by all the folks involved in the process, but if
18 you're suggesting that these decisions be made by
19 either the current or former members of SACs or the
20 folks in regional offices, then I'd have to disagree
21 with you.

22 I think that the ultimate decision is ours
23 and that we rely heavily on the judgment of the Staff
24 Director, and I think that that process does not
25 eliminate input from current and former members of

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1 SACs or the regional offices.

2 Commissioner Yaki.

3 COMMISSIONER YAKI: Yes. Using a value
4 neutral approach to this, given the fact that this is
5 a very active state with what presumably hopefully
6 will be a very active SAC, I think that having some
7 continuity in leadership would be important, and I am
8 going to make a substitute motion to nominate Mr.
9 Castro as the Chair of the Illinois SAC.

10 COMMISSIONER MELENDEZ: I would second
11 that motion.

12 COMMISSIONER BRACERAS: Do we know that
13 he's interested?

14 COMMISSIONER YAKI: Presumably he --

15 MR. MARCUS: I believe he is. I believe
16 that he would not -- I believe that he is interested.

17 COMMISSIONER YAKI: Presumably he would
18 not have been submitted by others if he had not given
19 an indication that he would have.

20 CHAIRMAN REYNOLDS: Okay. Conversation.
21 Mr. Castro, is he currently on the SAC?

22 COMMISSIONER BRACERAS: Un-huh.

23 COMMISSIONER YAKI: Yes, he is.

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER BRACERAS: I mean, I'm

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1 indifferent, honestly, except that I don't necessarily
2 feel that we should be disrupting, you know, the
3 discretion of the Staff Director, but --

4 CHAIRMAN REYNOLDS: Well --

5 COMMISSIONER BRACERAS: -- I'm a big fan
6 of Marti Castro. I gave \$400 to his congressional
7 campaign. You're not going to see a fight from me if
8 he becomes the chair.

9 CHAIRMAN REYNOLDS: I would say that we
10 just vote on the motion as the original motion. I see
11 no reason to undo the choice made by the Staff
12 Director. There will be many instances where there
13 are multiple strong candidates and a decision is made.
14 Unless we can find some type of flaw in the Staff
15 Director's process or some type of animus, then I
16 think that we should just -- at least I would
17 recommend that we defer.

18 COMMISSIONER YAKI: Point of order.

19 COMMISSIONER KIRSANOW: I think the
20 process is that we vote on a substitute motion.

21 COMMISSIONER YAKI: Right. Point of
22 order. The substitute motion takes precedence over
23 the main motion.

24 CHAIRMAN REYNOLDS: Okay.

25 COMMISSIONER MELENDEZ: I was going to

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1 address the substitute motion.

2 COMMISSIONER YAKI: Is there a second?

3 PARTICIPANT: Second.

4 COMMISSIONER MELENDEZ: And what I was
5 saying, the issue is there has to be some give and
6 take on this Commission, you know, and this might be
7 one of the give-and-takes because if for some
8 reason -- and we could lose the vote on this, but what
9 you'll see is like Commissioner Yaki said. I don't
10 have time to get involved with every one of these
11 SACs, but if we are not happy and there is no
12 compromise or no give and take on here, then what
13 you'll see is we'll really get into these SACs and
14 every one of these we come up, we'll focus off of
15 whatever else there is, and we'll start to put more
16 effort into really scrutinizing every one of these,
17 and that's where we're actually going.

18 CHAIRMAN REYNOLDS: I think that that's
19 each Commissioner's prerogative. If you'd like to
20 spend a lot of time pouring over each of the
21 candidates, I think it would probably be a good thing.
22 The more information the better.

23 And in terms of compromise, this
24 Commission has, I think, bent over backwards to try to
25 meet, to try to respond to all dissenting views.

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1 We've always tried to -- all on a regular basis, we
2 try to come up with compromises.

3 What we don't do is just say, "Let's
4 vote." We work at trying to find compromises. Most
5 of the time we're successful. Some of the time we're
6 not. So --

7 COMMISSIONER YAKI: I would agree.

8 COMMISSIONER MELENDEZ: Let me ask what
9 does Staff Director's -- what do you think about
10 changing to Mr. Castro as far as could it go either
11 way as far as you're concerned or you still -- because
12 it sounds like it's the Chairman that's basically
13 recommending. Maybe you thought about Mr. Castor.
14 Maybe it's the Chairman that's basically pushing you
15 to change your mind and go in a different direction.

16 CHAIRMAN REYNOLDS: Push you? Did I twist
17 your arm?

18 MR. MARCUS: No. Mr. Walker is my
19 recommendation and he is my enthusiastic
20 recommendation. I've heard and read very positive
21 things about him. He really seems to be a leader in
22 his community. He's very well regarded. He's been
23 very active in a number of issues related to civil
24 rights. I think he's going to be tremendous.

25 Mr. Castro I've also only heard good

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1 things about. I think either one of them would be
2 great. I think we are very fortunate that both
3 gentlemen are willing to serve and serve without
4 compensation in the relatively taskless job. If I had
5 had an opportunity to speak with Mr. Castro, if he
6 hadn't been traveling as part of his busy law
7 practice, I really don't know. I mean he might have
8 impressed me every bit as favorably as Mr. Walker, but
9 it's hypothetical at this point.

10 So I would say I enthusiastically
11 recommend Mr. Walker, but I've heard only good things
12 about Mr. Castro.

13 CHAIRMAN REYNOLDS: Commissioner Taylor.

14 COMMISSIONER TAYLOR: This is a process
15 that I think requires some level of deference to the
16 Staff Director. I would differ in the Chair in the
17 sense that I don't feel bound and limited by the need
18 to have a member of this Commission identify a flaw in
19 the Staff Director's logic in order for me not to
20 defer to him.

21 CHAIRMAN REYNOLDS: That's fair. I agree.

22 COMMISSIONER TAYLOR: Frankly, sometimes
23 there may be calls that we make where Commissioner
24 Yaki makes a recommendation, for example, or asks a
25 position, and I in the interest of maintaining the

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1 collegial nature of this body agree with.

2 Having said all of that, I'm going to vote
3 against the substitute motion because of the Chair's
4 involvement with this individual and his desire to see
5 him serve as chair. You know, absent that personal
6 involvement, I'd be more inclined, frankly, to go with
7 Commissioner Yaki's recommendation, but given the
8 Chair's personal involvement, I'm going to vote
9 against it.

10 I want to put another caution, if I could,
11 however. Commissioner Melendez indicated that he was
12 concerned that there would be an effort to stack
13 these, and I don't think that's true in any respect.
14 The process is open, and again, but for the personal
15 involvement of the Chair, I'd be inclined to support
16 Commissioner Yaki's motion, but I can't for that
17 reason.

18 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

19 COMMISSIONER KIRSANOW: I concur in large
20 part with comments made by Commissioner Taylor. I'm
21 encouraged, actually by the process as described by
22 Commissioner Braceras, the Chair, and the Staff
23 Director as to how we arrived at the recommended
24 motion pertaining to Mr. Walker.

25 We had a Republican Commissioner who had

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1 recommended a Democratic chair. The Staff Director
2 vetted the two, made a diligent effort to make sure
3 that he received comments from both of them, and
4 possibly because of time constraints couldn't receive
5 sufficient input to make a determination with respect
6 to Mr. Castro.

7 Mr. Walker doesn't seem to have any
8 deficiencies or defects that would disqualify him from
9 this process. So I think this has been a process that
10 was fair and open, transparent, and I'm also inclined
11 to vote against the substitute motion because I don't
12 defer to the Staff Director, but I think he has spent
13 a lot more time on this issue than I have, and I don't
14 know anything about Mr. Castro other than what I have
15 just heard here today and what's in the materials.

16 And clearly, the Staff Director has spent
17 more time on this than I have.

18 CHAIRMAN REYNOLDS: Two comments. When I
19 recommended Mr. Walker, I assumed that he was a
20 Democrat, and he marched with King and Abernathy, and
21 from that generation most of the black leaders were
22 Democrats. My assumption turned out to be wrong.

23 And as for Mr. Castro, he is imminently
24 qualified to be the chairman of that SAC, and in fact,
25 if he is still on the SAC and interested in the job

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1 the next go-round, my presumption is he will have my
2 vote.

3 COMMISSIONER KIRSANOW: I would call the
4 question.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER YAKI: Point of information.
7 On SACs are there chairs and vice chairs or is it just
8 chair?

9 MR. MARCUS: Typically we have chairs.
10 Vice chair is not a typical designation. I can't say
11 we don't have any in the 51, but typically we have a
12 chair.

13 COMMISSIONER YAKI: Well, what happens,
14 for example, when a chair is unable to fulfill his or
15 her duties?

16 MR. MARCUS: Well, that's a good question.
17 The process is to name an acting chair. For instance,
18 there was a motion to name an acting chair in Maine a
19 couple of months ago.

20 COMMISSIONER YAKI: Well, I would just say
21 listening to the Chairman and his strong feelings
22 about Mr. Walker, I'm inclined to withdraw my motion,
23 but I would suggest that perhaps in this instance
24 where we have two people very qualified, very
25 interested, perhaps we can in this instance create the

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1 chair/vice chair category so that they can both
2 function at a high level and hopefully working with
3 each other, and I would ask that we create a chair and
4 vice chair position in the State of Illinois, with the
5 chair being Mr. Walker and the vice chair being Mr.
6 Castro.

7 CHAIRMAN REYNOLDS: Okay. Second?

8 COMMISSIONER KIRSANOW: I'm not opposed to
9 that. I'm sorry if there's any discussion. I just
10 don't know if that's kind or presumptuous of us. You
11 know, it may be that Mr. Castro would see that as a
12 demotion or an insult. I don't know. We haven't
13 contacted him.

14 CHAIRMAN REYNOLDS: Well, we can do it
15 contingent upon a conversation with him.

16 Comments? How does everyone feel about
17 this?

18 (No response.)

19 CHAIRMAN REYNOLDS: Okay. I'm comfortable
20 with the motion and will support it. So let's vote on
21 the -- where are we now?

22 COMMISSIONER YAKI: Amended Yaki
23 substitute motion.

24 CHAIRMAN REYNOLDS: Thank you. The
25 amended Yaki substitute motion.

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1 COMMISSIONER KIRSANOW: Could we restate
2 it?

3 COMMISSIONER YAKI: That we accept the
4 recommendation of the Staff Director for Lee Walker to
5 be named as Chair; that we direct the Staff Director
6 to ask Mr. Castro if he would be willing to serve as
7 vice chair of the Illinois SAC and if so, would you
8 create that position, and entitle them there
9 forthwith.

10 CHAIRMAN REYNOLDS: All in favor? I'm
11 sorry.

12 COMMISSIONER TAYLOR: Second.

13 CHAIRMAN REYNOLDS: Okay. We have a
14 second here. We've already had our discussion. We
15 get to vote now. All in favor, please say aye.

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Any dissent,
18 objections, abstentions?

19 (No response.)

20 CHAIRMAN REYNOLDS: Okay. That motion
21 passes.

22 However, it was not clear --

23 PARTICIPANT: We still have the slate
24 portion.

25 CHAIRMAN REYNOLDS: Yes, that's right.

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1 It's finished with the slate. Okay. Now, let's vote
2 on the remaining recommendations. Do we need
3 additional discussion?

4 (No response.)

5 CHAIRMAN REYNOLDS: Okay. All in favor?

6 (Chorus of ayes.)

7 CHAIRMAN REYNOLDS: Objections?

8 COMMISSIONER MELENDEZ: Abstain.

9 CHAIRMAN REYNOLDS: Okay. Please let the
10 record reflect that with the exception of Commissioner
11 Melendez, all Commissioners present voted for the
12 motion. The motion carries.

13 We'll take a five-minute break.

14 COMMISSIONER MELENDEZ: Actually I'm
15 sorry. I wanted to abstain on the remainder.

16 CHAIRMAN REYNOLDS: Oh, okay. Please let
17 the record reflect that with the exception of
18 Commissioners Yaki and Melendez, all of the other
19 Commissioners voted in favor. The motion carries.

20 Let's take a five-minute break.

21 (Whereupon, the foregoing matter went off
22 the record at 11:09 a.m. and went back on
23 the record at 11:26 a.m.)

24 CHAIRMAN REYNOLDS: Let's go back on the
25 record.

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1 We have the rechartering package for Utah.
2 Commissioners Yaki and Melendez, if there are an
3 insufficient number of blacks on that committee, it's
4 not our fault.

5 May I have a motion that the Commission
6 recharter the Utah State Advisory Committee?

7 Under this motion the Commission appoints
8 the following individuals to that committee based on
9 the recommendations of the Staff Director:

10 Charlene Arbon

11 Glen Bailey

12 William Coleman

13 Virginius Dabney

14 Marco Diaz

15 Michael Homer

16 Robyn Kaelin

17 Daniel Levin

18 Edward Lewis

19 Joan Milner

20 Rosa Maria Martinez

21 David Parker

22 Betty Sawyer

23 Filia Uipi

24 Robert Whitehorse

25 And Jennifer Yim.

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1 With this motion, the Commission appoints
2 Mr. Uipi as chair of the newly rechartered Utah State
3 Advisory Commission. These members will serve as
4 uncompensated government employees, and the Commission
5 appreciates your hard work, assuming that this motion
6 passes, that they will contribute.

7 Under the motion the Commission authorizes
8 the Staff Director to execute the appropriate paper
9 work for the appointment.

10 Does anybody want to hand me this motion?

11 COMMISSIONER TAYLOR: So moved.

12 CHAIRMAN REYNOLDS: Thank you.

13 COMMISSIONER KIRSANOW: Second.

14 COMMISSIONER YAKI: I'm just going to say
15 the same objections as before.

16 COMMISSIONER MELENDEZ: I would ask the
17 Staff Director how this dialogue went with the
18 regional director.

19 CHAIRMAN REYNOLDS: I had no input into
20 this one. I don't know many people from Utah.

21 MR. MARCUS: I'm sorry, Commissioner. How
22 did my conversation --

23 COMMISSIONER MELENDEZ: How did that one
24 go as compared to the others as far as the Utah?

25 MR. MARCUS: In this one, we reached out

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1 to a number of organizations, including the Utah
2 Governor's Office, the State Foreign Commission's
3 Office, the University of Utah, at least one or two
4 members of Congress, the NAACP, the Asian Association
5 of Utah, the Utah Rasa Political Action Committee. We
6 reached out to a number of different groups and have
7 what I think is a fairly diverse, balanced group in a
8 number of respects.

9 The regional director's recommendations
10 looked pretty good to me. I made a number of efforts
11 to reach out and identify candidates to see whether I
12 was coming up with the same one as the regional
13 directors were coming up with with different ones.

14 In the State of Utah, I frankly did not
15 come up with very much, certainly different than the
16 regional directors, and I know he was working on it
17 very hard. Fortunately we were able, since this was
18 at the end of the fiscal year and we had a little
19 extra money, I was able to send the regional director
20 to Salt Lake City to do some recruitment.

21 I think at that point we were a little
22 weak on --

23 COMMISSIONER YAKI: You sent him on a
24 mission?

25 MR. MARCUS: -- we were a little weak on

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1 lawyers. So he was able to recruit lawyers, and the
2 package basically seemed to be balanced.

3 I looked at all of the candidates, and
4 especially Mr. Uipi. I interviewed Mr. Uipi by phone,
5 had a very good conversation with him. He certainly
6 seemed to be committed to the mission of the SAC.
7 Everything that I heard from him seemed to be very
8 positive, and so I was able to make the
9 recommendations essentially based on what the regional
10 director had suggested.

11 CHAIRMAN REYNOLDS: Additional
12 conversation?

13 (No response.)

14 CHAIRMAN REYNOLDS: Okay. All in favor,
15 please say aye.

16 (Chorus of ayes.)

17 CHAIRMAN REYNOLDS: Objections?
18 Abstentions?

19 (Show of hands.)

20 CHAIRMAN REYNOLDS: Let the record reflect
21 that Commissioner Yaki abstains. The remaining
22 Commissioners voted in favor of the motion. The
23 motion passes.

24 Okay, folks. We are done.

25 COMMISSIONER KIRSANOW: One thing. I just

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1 wanted to acknowledge my former assistant, Chris
2 Jennings, who left the employ of the Commission about
3 a month ago to take a position in Baghdad. The
4 Commission was a bit too stressful for him. He had
5 done tremendous work on my behalf in nearly three
6 years, and he was an extraordinary assistant, assisted
7 me in preparation for testimony and nomination of a
8 couple of Supreme Court Justices before the Senate
9 Judiciary Committees, done yeoman's work, and I shall
10 miss him.

11 COMMISSIONER YAKI: What's he doing in
12 Baghdad?

13 COMMISSIONER KIRSANOW: He's assisting
14 with the continued formation of the government.

15 COMMISSIONER BRACERAS: Who was he
16 employed by?

17 COMMISSIONER KIRSANOW: I can't remember
18 what the name of the entity is.

19 COMMISSIONER BRACERAS: Is he already
20 there?

21 COMMISSIONER KIRSANOW: Yes.

22 CHAIRMAN REYNOLDS: Okay. Well, folks, we
23 will reconvene at one o'clock. Please try to get here
24 on time.

25 The briefing, as you know, will be covered

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1 by C-SPAN, and it would be great if we could start on
2 time.

3 (Whereupon, at 11:31 a.m., the meeting was
4 recessed for lunch, to reconvene at 1:00 p.m., the
5 same day.)

6 **VI. Briefing on Voter Fraud and Voter Intimidation**

7 CHAIRMAN REYNOLDS: Okay, folks. Let's
8 get started.

9 I guess I start off by welcoming our
10 panelists. I would ask everyone to silence their cell
11 phones.

12 On behalf of the Commission on Civil
13 Rights, I welcome everyone to this briefing on voter
14 fraud and voter intimidation. The Commission
15 frequently arranges such public briefings with
16 presentations from experts outside of the agency in
17 order to inform itself and the nation of civil rights
18 issues.

19 At this briefing a panel of experts will
20 advise the U.S. Commission on Civil Rights on the
21 frequent allegations of voter fraud and intimidations
22 that have questioned federal and state elections in
23 recent years. Purported incidents of voter fraud
24 include non-citizens voting, eligible voters casting
25 two or more ballots or impersonating other voters and

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1 other types of fraud.

2 Claims of voter intimidations have
3 involved officials purportedly challenging voters in
4 minority areas with requests for identification and
5 providing incorrect information on voter eligibility.

6 This morning we are pleased to welcome
7 four experts on various aspects of voter fraud and
8 voter intimidation.

9 First, we have Robert Pastor, currently a
10 professor of international relations at American
11 University and former Executive Director of the
12 Carter-Baker Commission, more formally known as the
13 Commission on Federal Election Reform.

14 Second to speak will be Thor Hearne, a
15 member and principal of the law firm of Lathrop & Gage
16 in St. Louis, Missouri. He was the national election
17 counsel for the Bush-Chaney ticket in '04, and general
18 counsel to the American Center for Voting Rights.

19 Third will be Donna Brazile, Chair of the
20 Democratic National Committee's Voting Rights
21 Institute and former campaign manager for the Gore-
22 Lieberman ticket in 2000.

23 Finally we'll have John Fund of the Wall
24 Street Journal and author of a 2004 book Stealing
25 Elections: How Voter Fraud Threatens our Democracy.

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1 I welcome all of you on behalf of the
2 Commission, and we'll introduce everyone and describe
3 your activities, and then we'll call on you according
4 to the order which I have given for the record.

5 First up we will have Robert Pastor, who
6 has been the Vice President of International Affairs
7 and a professor of international relations at American
8 University since 2002. In addition, Dr. Pastor is the
9 Executive Director of the Commission on Federal
10 Election Reform, co-chaired by Jimmy Carter and James
11 Baker.

12 From 1985 until he arrived in American
13 University, Dr. Pastor was the professor of political
14 science at Emory University and a fellow and founding
15 director of the Carter Center's Latin American and
16 Caribbean Program and the Democracy and China Election
17 Projects.

18 He has held many other prestigious
19 positions in government and academia. He was a Peace
20 Corps volunteer in Malaysia, a Fulbright Scholar in
21 Mexico, a Straus Visiting Professor at Harvard
22 University, and the creator of the Humphrey Fellows
23 Program.

24 Dr. Pastor is author or editor of 16
25 books, including Toward a North American Community,

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1 Exiting the Whirlpool, U.S. Foreign Policy Towards
2 Latin America, and others.

3 Second we have Thor Hearne. Thor
4 currently serves as counsel to the American Center for
5 Voting Rights Legislative Fund. Prior to joining the
6 legislative fund, he served as the national election
7 chief counsel to President Bush's reelection campaign
8 for 2004 and in 2000, he was the Missouri counsel to
9 the Bush campaign.

10 Hearne was served as legal counsel in too
11 many other political candidates and campaigns on the
12 federal and state level. Mr. Hearne testified before
13 the U.S. House Administration Committee hearing in
14 March 2005 regarding the presidential election in
15 Ohio.

16 Mr. Hearne also testified before the
17 Missouri Commission to investigate the 2000 Missouri
18 general election and allegations of fraud in the city
19 of St. Louis.

20 More recently, Mr. Hearne served as an
21 academic advisor to the bipartisan Carter-Baker
22 Commission on Election Reform. Mr. Hearne also served
23 as the attorney and law clerk in the U.S. Department
24 of Education for the Office for Civil Rights during
25 the Reagan Administration.

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1 He received his law degree from Washington
2 University Law School and his B.A. from Washington
3 University in St. Louis.

4 Third we'll have Donna Brazile, who is the
5 Chair of the Democratic National Committee's Voting
6 Rights Institute, and an adjunct professor at
7 Georgetown University in Washington, D.C.

8 Ms. Brazile is the former campaign manager
9 for the presidential election for the Gore-Lieberman
10 ticket in 2000 and the first black American to lead a
11 major presidential campaign.

12 Prior to joining the Gore campaign, Ms.
13 Brazile was Chief of Staff and press secretary to
14 Congresswoman Eleanor Holmes Norton of the District of
15 Columbia. She is a weekly contributor and political
16 commentator on CNN's Inside Politics and American
17 Morning.

18 In addition she is a columnist for Roll
19 Call Newspaper and appears regularly on MSNBC's Hard
20 Ball and Fox's Hannity & Colmes. A veteran of
21 numerous national and statewide campaigns, Ms. Brazile
22 worked on several presidential campaigns for
23 Democratic candidates

24 In addition, Ms. Brazile has served as a
25 senior lecturer and adjunct professor at the

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1 University of Maryland and a Fellow at Harvard's
2 Institute of Politics. Ms. Brazile is a recipient of
3 numerous awards and honors, including Washingtonian
4 magazine's 100 Most Powerful Women in Washington,
5 D.C., Essence magazine's 50 Most Powerful Women in
6 America, and the Congressional Black Caucus
7 Foundation's award for political achievement.

8 She is currently the founder and managing
9 director of Brazile & Associates, a political
10 consulting and grassroots advocacy firm based in the
11 District of Columbia.

12 Finally, we have John Fund, who writes the
13 weekly "On the Trail" column for Opinion.com, for the
14 Journal, and he is author of the 2004 book Stealing
15 Elections: How Voter Fraud Threatens our Democracy.

16 Mr. Fund joined the Wall Street Journal in
17 April of 1984 as Deputy Editorial Features Editor. He
18 became an editorial page writer specializing in
19 politics and government. In October of 1986 and was
20 a member of the Journal's editorial board from 1995 to
21 2001. Mr. Fund worked as a research analyst for the
22 California State Legislature in Sacramento before
23 beginning his journalism career in 1982 as a reporter
24 for the syndicated columnist Roland Evans and Robert
25 Novak.

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1 In 1983, he received the Warren Brooks
2 Award for Journalistic Excellence from the American
3 Legislative Exchange Council. He and former
4 Pennsylvania Representative James Kohn are co-authors
5 of the book Cleaning House: America's Campaign for
6 Term Limits.

7 Mr. Fund attended California State
8 University where he studied journalism and economics.

9 Panelists, thank you very much for carving
10 out this time from your busy schedules. We will start
11 with Professor Pastor.

12 You'll have ten minutes.

13 DR. PASTOR: Thank you very much, Mr.
14 Chairman and members of the Commission. It's an honor
15 to testify before you today on these very important
16 issues of fraud and election and intimidation in the
17 context of broader election reform.

18 For the last 20 years I've worked on
19 improving the electoral process in the United States
20 and throughout the world. At American University we
21 sponsored the Carter-Baker Commission on Federal
22 Election Reform, issued a report with 87 specific
23 recommendations as to what is needed to improve our
24 process.

25 The subject of your hearing today

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1 demonstrates why it is both necessary and difficult to
2 make progress on these reforms. For many Republicans,
3 the principal problem is electoral fraud and for many
4 democrats the issue is voter intimidation and the
5 impediments to voting.

6 For many Republicans, the solution is
7 voter IDs and for many Democrats voter IDs are the
8 problem, not the solution.

9 For our commission, which was roughly
10 divided between Republicans, Democrats and
11 independents, we all believe that a free election
12 requires both valid integrity and access, and that
13 voter IDs are a part of the problem -- a part of the
14 solution, but if they become the entire part of the
15 solution, then they actually become the problem.

16 The other parts to the solution include
17 expanding access through an affirmative role by the
18 states to provide free voter IDs and to expand the
19 base of registered voters to take steps to insure
20 there is no intimidation and also to examine other
21 kinds of election fraud and take steps against them.

22 Without going into the full
23 recommendations, let me try to summarize the broad
24 approach that the Carter-Baker Commission took. Let
25 me say having observed elections all over the world,

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1 I've seen crude efforts to manipulate elections and to
2 intimidate voters on a national scale. Fortunately
3 this does not occur in the United States, and one
4 reason is that our system is so decentralized that
5 it's frankly, impossible to manipulate the electoral
6 system on a nationwide basis. Indeed, it's hard to
7 persuade states and counties to accept uniform
8 requirements that Congress has mandated.

9 There is some forms and some fraud and
10 some intimidation in U.S. elections, and the
11 perception may be growing albeit from each group that
12 each problem is getting worse. Any fraud and
13 intimidation represent egregious assaults on our
14 democracy, and we need to take steps to stop both, but
15 we also need to recognize that we face a wider range
16 of election related problems. We need to, for
17 example, establish nonpartisan, autonomous,
18 professional election administration in our states.
19 It does not exist today.

20 We need paper audits and electronic
21 security and more accurate and up to date and
22 interoperable registration lists. We need to
23 undertake all of these reforms to build greater
24 confidence in elections.

25 In our report, we identify numerous

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1 recommendations, first to improve access to elections
2 through improved registration for our citizens,
3 including Americans with disabilities and those
4 working or serving abroad.

5 We need to restore voting rights to
6 otherwise eligible citizens who have been convicted of
7 a felony. We need greater voter education so that
8 more people can understand their responsibility to
9 vote and make it easier for them to do so.

10 With regard to election fraud, our
11 Commission judges that it's, frankly, difficult to
12 measure, but that it occurs. The U.S. Department of
13 Justice has launched more than 180 investigations into
14 election fraud since October 2002. These
15 investigations have resulted in charges of multiple
16 voting, of providing full information on felon status,
17 other offenses as well.

18 Some cases, of course, are never pursued
19 because the difficulty of obtaining sufficient
20 evidence for prosecution or because many people
21 believe that this is a victimless crime. In truth,
22 election fraud usually attracts public attention and
23 comes under investigation only under very close
24 elections.

25 We recommend steps that the Department of

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1 Justice should undertake to deal with that.

2 Absentee ballots remain the largest source
3 of potential voter fraud. Our Commission recommended
4 that state and local jurisdictions should prohibit a
5 person other than voter from handling absentee
6 ballots. The practice of allowing party workers from
7 delivering absentee ballots should be eliminated.
8 States should also make sure that absentee ballots
9 received by election officials before election day are
10 kept secure until they are counted.

11 The practice of challenges may contribute
12 to ballot integrity, but it can also have the effect
13 of intimidating eligible voters. New procedures are,
14 therefore, needed to protect voters from such
15 intimidating tactics, while also offering
16 opportunities to keep the registration rolls accurate
17 and to provide observers with meaningful opportunities
18 to conduct the elections.

19 States need to provide and define clear
20 procedures for challenges which should mainly be
21 raised and resolved before the deadline for voter
22 registration.

23 In addition to the penalties set by the
24 Voting Rights Act, it should be a federal felony to
25 engage in any act of violence, property destruction or

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1 threat that is intended to deny any individual the
2 right to vote. To deter systemic efforts to deceive
3 or intimidate voters, the Commission recommended
4 federal legislation to prohibit any individual or
5 group from deliberately providing the public with
6 incorrect information about election procedures for
7 the purpose of preventing voters from going to the
8 polls.

9 A good registration list will insure that
10 citizens are only registered in one place, but
11 election officials need to make sure that the person
12 arriving at a polling site is the same one that is
13 named on the registration list.

14 In the United States where 40 million
15 people move each year, we believe that some form of
16 identification is needed. We were concerned, however,
17 over the expanding and proliferation of voter ID
18 requirements and believe that this could be the source
19 of discrimination.

20 Therefore, we recommended a single uniform
21 ID which used the real ID card as the basis for doing
22 that, which also requires proof of citizenship or
23 lawful status. But it's also essential for the states
24 to play an affirmative role to insure that those
25 people who do not have a driver's license have access

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1 to a free photo ID, and indeed, that mobile offices at
2 a much more enhanced role by states is undertake so
3 that we use the real ID as an opportunity to expand
4 voter registration lists and, therefore, expand voter
5 participation.

6 We believe that this is possible, but it
7 requires an affirmative role by the state.

8 To verify the identity of voters who cast
9 absentee ballots, the voter's signature on the
10 absentee ballot can be matched with a digitalized
11 version of the signature that the election
12 administration maintains.

13 CHAIRMAN REYNOLDS: Two minutes. You have
14 two minutes remaining.

15 DR. PASTOR: Thank you. I'm just about
16 there.

17 There are also concerns that IDs might be
18 a step towards a police state, but the truth is most
19 advanced democracies have national identification
20 cards. Still, nonetheless, we recommend new
21 institutional and procedural safeguards, including
22 ombudsmen to assure people that their privacy,
23 security and identity will not be compromised by ID
24 cards. The cards should not become instruments for
25 monitoring behavior.

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1 In conclusion, fraud and intimidation of
2 any kind and magnitude is unacceptable in a free
3 electoral process, and if the perception is growing
4 that both are getting worse, then additional
5 safeguards are absolutely essential.

6 The Carter-Baker Commission offered dozens
7 of recommendations to address the two issues, as well
8 as others that confront the full gamut of problems
9 facing the U.S. electoral process, including the need
10 to establish nonpartisan, professional, and autonomous
11 election systems in each state and oversight over the
12 source codes and verifiable paper audits for
13 electronic machines.

14 To implement these goals requires that
15 party leaders in each legislative body recognize that
16 access and integrity are two sides of the same
17 problem, and both need to be protected.

18 Thank you, sir.

19 CHAIRMAN REYNOLDS: Thank you.

20 Mr. Hearne.

21 MR. HEARNE: Thank you, Mr. Chairman.

22 It is truly an honor to be here, as Mr.
23 Pastor mentioned, Professor Pastor mentioned, and I
24 appreciate being invited.

25 I also am very grateful that this

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1 Commission is looking into this at a time when our
2 nation is on the cusp of a midterm election. Our
3 national attention is focused on elections, how we are
4 going to conduct our elections.

5 Let me note Bob Pastor mentioned the
6 Carter-Baker report. I had the honor of being one of
7 the many academic advisors that assisted in that
8 effort, and that was, I consider, a high point in the
9 process of developing bipartisan consensus on election
10 reform.

11 Bob Pastor himself really labored heavily
12 on that project, as did many others, and I would
13 commend that in my recommendation to this Commission
14 as being very thoughtful consensus of bipartisan
15 recommendation from various leaders, including folks
16 such as Andrew Young, Lee Hamilton, President Carter,
17 Secretary of State Baker, and many others who shared
18 and participated in that work. It is an outstanding
19 product, and it is one that I think, again, has some
20 recommendations that are of very significant value to
21 this Commission.

22 But as a Commission, the Carter-Baker
23 Commission noted, as anyone who is looking at recent
24 polls can see, we have a situation in this country
25 where there is a confidence problem in our elections.

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1 Most voters do not have confidence or a significant
2 number of voters do not have confidence that their
3 vote will be fairly and accurately counted, that they
4 will have a fair and accurate opportunity to
5 participate in the election, and that lack of
6 confidence translates into a lower participation by
7 voters.

8 And both of those, confidence and
9 participation, are features that we think, I think
10 should be addressed and I appreciate, again, this
11 Commission doing that.

12 Let me address -- and I will not read my
13 prepared remarks since I presented those to the
14 Commission. I will spare you from that and just
15 simply hit a few high points that I noted that I
16 believe are particularly compelling, as one who has
17 been in the election area, in the election law
18 practice for some time.

19 Specifically, the most important initial
20 step and HAVA, the Help American Vote Act, took
21 significant strides in this direction, is a current
22 inaccurate voter roll. The most likely reason an
23 eligible citizen will be denied their opportunity to
24 cast a ballot is when they go into their polling
25 place, they find that their name is not on the voter

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1 roll. An error in the voter roll, however it gets in
2 there, can deny or disenfranchise a legitimate voter
3 from casting a ballot.

4 Voter rolls in my home State of Missouri,
5 right now the Department of Justice is suing our state
6 because we have voter rolls that in some cases have
7 150 percent of the voting age population listed on the
8 voter roll. Clearly it is not an accurate voter roll.

9 Just this Monday in Missouri we find the
10 St. Louis Post Dispatch front page story was the
11 suspect voter registration cards, thousands of
12 registration cards, fraudulent registration cards
13 submitted to the City of St. Louis Election Board.

14 Yesterday or day before the Kansas City
15 Star ran a headline where thousands of fraudulent
16 registration forms were submitted in Kansas City. In
17 2004, we had a situation where a fellow named Chad
18 Staton was paid in crack cocaine to submit fraudulent
19 voter registration cards in Defiance County, Ohio.
20 Those registration cards included ones for Dick Tracy
21 and Mary Poppins.

22 Whether somebody does or doesn't cast a
23 ballot in the name of those fraudulent registrations,
24 that entire process undermines our public confidence.
25 When you read the paper and you see that thousands of

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1 fraudulent registrations are submitted, when you see
2 that the election is administered in a way where we
3 don't know if the voter rolls are accurate, our
4 citizens are losing confidence in the process.

5 Carter-Baker recommendations go a long way
6 to addressing that and having some very sound policies
7 that states in the federal government should adopt,
8 but as I said, a current, accurate, single statewide
9 voter roll this year in '06 is the first year that
10 HAVA has that requirement, and hopefully, we will go
11 a long way to doing that.

12 Making sure that state election officials
13 properly fund that so every eligible, registered,
14 legitimate voter has their name appear properly on the
15 voter role is a good thing. Taking steps to prevent
16 people from trying to game the system with fraudulent
17 registration forms is also a good step and
18 recommendation to prevent people from doing that.

19 Both Democrat and Republican election
20 officials testified in the aftermath of Ohio in '04
21 that what they found was large numbers of fraudulent
22 registration forms were dumped on them right at the
23 deadline, and that had the following effect. It made
24 it more difficult for them to process those
25 registration forms accurately. It also potentially

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1 prevented some of them from being added to the voter
2 role in a timely manner.

3 I think voter registration forms, as the
4 Carter-Baker Commission recommended, should be
5 submitted within several days after they are
6 collected, maybe seven days to ten days. That means
7 that we will have less likelihood of a registered
8 eligible voter being denied the opportunity to be
9 accurately added to the voter roll. It will also
10 allow election officials to do their job more
11 accurately.

12 Bob Pastor mentioned the issue of voter
13 identification. I understand that that's a
14 contentious issue in the country right now, but it
15 shouldn't be, and I regret that in some cases it has
16 become one. I think the Carter-Baker recommendation
17 had a sound recommendation. Let's transition into a
18 government reliably issued photo identification. We
19 use that to rent a video, to get on a plane to cash a
20 check. It has become a ubiquitous feature of our life
21 today to have that kind of identification.

22 Every poll ranges between 80 percent and
23 90 percent of the public support that kind of
24 confidence building measure. Now, we need to be very
25 mindful that we should not impose a requirement if we

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1 do not provide the means for everyone to meet that
2 requirement to vote, which means that that card which
3 specifies citizenship and identity of a voter also has
4 protections to make sure they get access to them, have
5 ready access to them, the free photo ID, and that it
6 is without any charge to anyone seeking to obtain that
7 in order to vote.

8 What you will find is some bipartisan
9 consensus united on the need for photo identification,
10 and in the perspective that I've had, the
11 conversations that I have had with those who support
12 that, Republican, Democrat, civil rights leaders as
13 well, is they see a photo identification card as a
14 means to increase participation. In fact, there has
15 been a study by the economist John Watt that found
16 that when you have greater confidence in the election
17 process, you have greater participation.

18 And specifically, while not looking at
19 photo ID, but looking at voter identification
20 provisions, what Professor Lott found was you actually
21 had greater participation by voters when you had a new
22 identification requirement those the participation
23 before, and that study is attached to my testimony to
24 this Commission. That is the kind of common sense
25 measure I think we need to support.

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1 Again, we need to do it in a way that
2 makes sure everybody has access to that, that when we
3 do it that way, it should increase confidence.

4 There are some voters who seek to
5 participate in the election who don't, who choose not
6 to because they fear when they go in somebody will
7 recognize their name. Maybe they have an unusual
8 name. Maybe it's not a common name. Maybe they rear
9 somebody doesn't recognize their signature.

10 If you give these voters a card with their
11 picture on it and say you go into the polling place,
12 you present this card to the election officials, and
13 this will guarantee your right to cast a ballot, that
14 increases participation. That increases confidence,
15 and that's something that should enjoy bipartisan
16 support.

17 I also note, as in Donna's prepared
18 remarks, she said the same point, that --

19 CHAIRMAN REYNOLDS: Two minutes remain,
20 sir.

21 MR. HEARNE: Thank you.

22 -- that increased confidence equals
23 increased participation. So I think that should be
24 our theme that we seek to embrace.

25 Finally I will just note some other

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1 specific recommendations in terms of the
2 administration. I share many of the points that were
3 mentioned by other panelists in their prepared
4 testimony, but the need to have confidence in our
5 election technology, our voting machines, how the
6 votes are tabulated, we need to have provisions in
7 place so that we don't have arbitrary decisions of
8 election officials determining the outcome.

9 Voters should believe at the end of the
10 election that they were the ones who decided the
11 outcome; that this was not decided by judges and
12 lawyers or election officials acting in an arbitrary
13 manner. We need to have clear, consistent, uniform
14 rules for the conduct of our election throughout the
15 process.

16 Some states have taken -- and I will note
17 two, Missouri being one with their Voter Protection
18 Act, sweeping election reform in the State of Missouri
19 modeled on Carter-Baker recommendations. A similar
20 state, Pennsylvania, signed by Governor Rendell, the
21 Pennsylvania Voter Accessibility Act. Move polling
22 places out of locations in homes where previously in
23 Philadelphia they had polling places in people's
24 basements or locations where they could not readily
25 vote. That changed under the Pennsylvania law.

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1 That's the kind of broad, bipartisan
2 election reform that I would recommend to this
3 Commission to consider for their recommendations.

4 Thank you very much.

5 CHAIRMAN REYNOLDS: Thank you.

6 Ms. Brazile.

7 MS. BRAZILE: Thank you so much, Mr.
8 Chairman.

9 I had to put a smile on my face when Thor
10 mentioned some voter polling places in the basement.
11 Before Katrina the polling place at my home in New
12 Orleans was in our basement, and it's no longer there.
13 So I just wanted to let you know a natural disaster
14 solved that problem.

15 But, Mr. Chairman, members of this
16 Commission, I'm honored to be here. I have spent my
17 entire adult life starting at the age of nine going
18 door to door trying to encourage the participation of
19 all citizens to be engaged in the electoral process,
20 to register, to participate.

21 I started long before I turned 18, quite
22 frankly, because I was excited about the prospects
23 that one candidate in my community had promised to
24 build a playground, and here I was, a young kid that
25 enjoyed athletics and sports, and when I had the

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1 opportunity to go door knocking encouraging my
2 friends, their parents and others to sign up, I felt
3 it was my civic obligation and duty to get people
4 involved.

5 We won that election, and we got our
6 playground, and at the age of 12 I became an assistant
7 coach. I've been hooked on politics ever since.

8 But clearly, in my lifetime I have seen
9 barriers come down. I have seen new barrier come up
10 to voter participation by ordinary citizens. The
11 barriers that came down were perhaps the barriers that
12 took the longest to come down, the barriers that
13 prevented people because of their race, because of
14 their age, from voting.

15 The barriers that are still erected,
16 sometimes invisible barriers today, are the barriers
17 for ordinary citizens to even find out about how to
18 get involved, how to register, and of course, the
19 barriers now that when most voters go to the polling
20 booth, they find people there who are somehow or
21 another paid by political operatives to tell them that
22 this is not election day. Election day is another
23 day, or if they hadn't paid their parking fines or
24 their child support payment, perhaps they should turn
25 around and come back another day.

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1 On election day in 2000, I was in Florida
2 with my former boss, the candidate for the Democratic
3 nominee, Al Gore, and as my practice on election day,
4 I'm often on radio stations across the country
5 encouraging people to go out and vote.

6 Now, that morning I'll never forget it as
7 long as I live. I heard citizens call into various
8 stations saying, "My polling site is not open," or, "I
9 attempted to go to my polling station and my name has
10 been inadvertently removed. I voted in the primary
11 several months ago, but no my name is not there. What
12 should I do?"

13 And of course, later that morning I heard
14 from my own sister who resided in the State of
15 Florida, and she asked me, "How many forms of ID do I
16 need to vote?"

17 Here it is, my sister. I'm one of nine
18 kids, number seven, and she said, "Donna, I have my
19 voter registration card. I have my driver's license,
20 and yet they said my name is not there. I have to
21 produce another ID."

22 Well, my sister had to produce a third ID,
23 which was a utility bill.

24 Mr. Chairman, members of this committee,
25 it is my experience as somebody who has worked on

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1 campaigns at all levels in our country that the
2 barriers should not exist. The barriers to citizen
3 participation should not be erected just for partisan
4 gain, and what I've seen over the years is barriers
5 erected for one particular candidate, one particular
6 party to try to suppress the vote, to encourage people
7 not to turn out, to threaten them and to use other
8 forms of intimidation. I understand that there's a
9 great concern about number of perhaps ineligible
10 citizens who show up at the polls on election day, and
11 there are many of them, I'm sure, who think that for
12 some reason they were registered and just show up.

13 But we know that it's all too common in
14 our democracy that certain individuals are showing up
15 with the best of intentions to try to participate, and
16 in other cases they were told that once they filled
17 out a form and showed their ID when they registered,
18 that everything was fine and they trusted some citizen
19 or some nonpartisan organizations to submit their
20 forms on time.

21 But they did not expect in the case that
22 we learned in 2004 in Ohio; they didn't expect that
23 once they showed up that the machines would be
24 inoperable or worse, that they would have to stand in
25 line up to five hours in some cases in Kenyon College

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1 ten hours in order to vote.

2 I submitted my testimony for the record.
3 Following the 2004 election, I was quite concerned.
4 I didn't want to go through another election cycle
5 where I heard the complaints from ordinary people
6 about whether or not the machines would work, whether
7 or not the poll workers would be trained, whether or
8 not they would be stopped before election day.

9 And so we undertook a study at the
10 Democratic National Committee's Voting Rights
11 Institute to find out what exactly happened. We
12 wanted to not just hear from some of the experts or
13 the partisans. We wanted to hear from the people
14 themselves.

15 And so in the weeks following the
16 election, we went out and tried to get from those who
17 were actually on the ground what had happened on
18 election day. We conducted a comprehensive study to
19 determine the accuracy, the validity, and the problems
20 surrounding the 2004 election. Simply, we wanted to
21 know what happened. What was the experience of voters
22 when they went to cast their ballots?

23 Ohio may have experienced the most extreme
24 and widespread problems. It can be viewed as a
25 microcosm for several battleground states. The types

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1 of problems reported in Ohio were reported in other
2 states, but of course, as many of you know, in
3 battleground states we have mortal problems. Thor
4 mentioned Missouri. I can give other examples of
5 states where citizens experience confusing problems at
6 the ballot box, being removed from the polling
7 station, having them show ID when, in fact, in many
8 states there is no requirement to show ID once they
9 have voted, however, even maintains that once you have
10 shown your ID to vote, you didn't have to show it
11 again.

12 And yet it was disturbing to find out that
13 many African Americans had to produce ID when the law
14 did not stipulate unless they were first time voters.
15 All of this is in the report by the Democratic
16 National Committee's Voting Rights Institute, along
17 with the Lawyers Committee for Civil Rights, the House
18 Democratic Caucus, which also conducted a study on
19 some of the problems that they found in Ohio and
20 elsewhere.

21 But before we try to address the issue of
22 voter fraud, which I do believe and I condemn it every
23 day of my life, let us commit to a policy of voting as
24 civil rights for all citizens of the United States and
25 design and implement policies that further that right

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1 and goal without erecting more barriers that could
2 substantially dilute the participation of Americans.

3 Today as we speak, 25 days before the
4 election, over 54 million Americans are not registered
5 to vote. The highest concentration of those not
6 registered but eligible are minorities, 40 percent of
7 Hispanic Americans, 30 percent of African Americans.
8 We need to find ways to encourage the participation of
9 all individuals to get involved in the electoral
10 process and not set up new barriers to their
11 registration.

12 The Brennan Center, which put out a report
13 this summer on voter suppression came up with five
14 ways, five threats that is now hampering citizens'
15 ability, and they are the restrictions to voter
16 registration drives. We saw that take place this year
17 in Florida and Ohio where Secretaries of State and
18 statewide officials put barriers to nonpartisan
19 organizations to conduct voter registration drives.

20 We also know that there are barriers as
21 relates to --

22 CHAIRMAN REYNOLDS: Two minutes.

23 MS. BRAZILE: I've got you. Two minutes.

24 There are also barriers as it relates to
25 some citizens being purged inadvertently. There were

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1 studies that came out of Florida. Up to 30 percent of
2 those who were purged were, you know, primarily
3 located in Democratic precincts or it was
4 substantially more minorities.

5 We also know that proof of ID as proof of
6 citizenship when it's not required is another tactic
7 to suppress and intimidate voters, and also voting
8 machine security.

9 And I have here with me today some
10 materials from not just some of the organizations, a
11 broad array of organizations calling for emergency
12 paper ballots since Congress failed to act on any
13 meaningful election reform, and also a statement from
14 ACORN addressing some of the allegations around voter
15 fraud.

16 Let me say in closing, Mr. Chairman, that
17 I do requirements which are illegally administered,
18 and basically dilute voting participation for
19 individuals should not be required unless we can come
20 up with some systematic way to encourage those
21 citizens who may not have access to motor vehicle
22 places and other government issued places to have
23 access to those different requirements.

24 We should find a uniform way where there's
25 having a clean voter registration list and encourage

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1 other proof of eligibility, but we should not erect
2 more barriers that would hinder people's ability.

3 And lastly, according to USA Today several
4 days ago, the Election Administration Commission,
5 which is responsible for implementing HAVA, has
6 produced a commission and produced a bipartisan report
7 on voter fraud. This report, which is caught in the
8 newspaper, is very -- did not find many instances of
9 voter fraud, has not been released publicly. I would
10 hope that this Commission would encourage the Election
11 Administration Commission to release that report to
12 the public.

13 CHAIRMAN REYNOLDS: Thank you, Ms.
14 Brazile.

15 Mr. Fund.

16 MR. FUND: Thank you.

17 I want to thank the Commissioners for
18 addressing this important issue because we may be only
19 three weeks away from repeating the 2000 Florida
20 election debacle, although this time not in one but in
21 several states with allegations of voter fraud,
22 intimidation, and manipulation of voting machines
23 added to the generalized chaos we saw in Florida.

24 It's time to acknowledge the U.S. still
25 has in many places a haphazard election system that is

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1 more befitting an emerging nation than the world's
2 leading democracy.

3 Walter Dean Burnham has called our system
4 the world's sloppiest electoral process. How sloppy?
5 Just ask the residents of Maryland last month who saw
6 their primary election thrown into chaos after
7 electronic voting machines couldn't be activated.
8 Thousands of voters gave up and went home surrendering
9 their right to vote.

10 Now we have the prospect of both
11 candidates for governor in Maryland, the Republican
12 Governor Bob Ehrlich and the Democratic challenger,
13 Mr. O'Malley, calling on voters to cast their ballots
14 by absentee. This shows a complete lack of confidence
15 in our election system, and this presents us with two
16 possible problems.

17 If Donna Brazile and others are
18 legitimately worried about voter intimidation, the
19 easiest ballots to intimidate voters over are absentee
20 ballots because they're cast outside of the purview
21 and the authority of election officials, and we have
22 a long history in this country of people being
23 intimidated either by their spouses, their relatives,
24 their employers, union officials, or others into
25 casting an absentee ballot a certain way. More

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1 absentee ballots equals more voter intimidation.

2 In addition, absentee ballots are the most
3 easy method to commit voter fraud, again, because
4 they're cast outside the view and the authority of
5 election officials.

6 The 2000 Florida recount was more than
7 merely a national embarrassment. It left a lasting
8 scar on the American political psyche. Indeed, the
9 level of suspicion is such that many Americans are
10 convinced that politicians can't be trusted to play by
11 the rules and will either commit fraud or intimidate
12 voters at the slightest opportunity.

13 Now, the 2000 election did result in some
14 modest reforms at the federal level, such as the Help
15 America Vote Act of 2002, but the implementation has
16 been slow. Although I will say one positive outcome
17 of the HAVA Act is that Donna Brazile's sister, if she
18 did not produce all of the ID that she thought she
19 needed to produce, would have been allowed under HAVA
20 to request a provisional ballot. That provisional
21 ballot would have been counted later after she had
22 established her eligibility.

23 So under the current system if you don't
24 have the ID, you're allowed a provisional ballot.
25 That provisional ballot will be counted if you are,

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1 indeed, an eligible voter.

2 America's election problems go beyond the
3 strapped budgets of many local election offices. More
4 insidious are flawed voter rolls, voter ignorance,
5 lackadaisical law enforcement, and the shortage of
6 trained volunteers at the polls.

7 Something like 70 percent of our poll
8 workers are going to be retiring in the next year.
9 It's an old person's occupation. We need to find some
10 way to bring young people, college students, high
11 school students into the process.

12 All of this adds up to an open invitation
13 for errors, miscount or fraud. Reform is easy to talk
14 about, but difficult to bring about. Many of the
15 suggested improvements, such as requiring voters to
16 show ID at the polls, are bitterly opposed. Others
17 such as improving the security of absentee ballots,
18 which Professor Pastor mentioned, are largely ignored.

19 And of course, the biggest growth sector
20 of our election industry has been the turning of
21 election day into election month through a new legal
22 quagmire, election by litigation. Every close race
23 now carries with it the prospect of demands for
24 recounts, lawsuits, and seating challenges in
25 Congress. Some people joke that they're waiting for

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1 the day that the politicians can just cut out the
2 middle man and settle all elections in court.

3 That gallows humor may be entirely
4 appropriate given the predicament we face. The 2000
5 election may have marked a permanent change in how an
6 election can be decided. We need to restore public
7 confidence.

8 Ironically, Mexico and many other
9 countries have election systems that are more secure
10 than ours. It wouldn't be possible in Mexico to have
11 a situation that we have in many of our American
12 cities where the voter roles have more names on them
13 than the U.S. Census lists as the total number of
14 residents over the age of 18.

15 Philadelphia's voter roles, for instance,
16 have jumped 24 percent in the last ten years at the
17 same time the city's population has declined by 15
18 percent. Something is going on there, and it probably
19 does not lead us to greater accuracy at the polls.

20 In the U.S. at a time of heightened
21 security and rules that require us to show ID to
22 travel and to enter most federal buildings, only about
23 25 states require some form of documentation in order
24 to vote. A recent Wall Street Journal-NBC News poll
25 confirms every other poll that I've seen on this

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1 subject. It found that over 81 percent of those
2 surveyed supported the requirement to show photo ID.
3 This included two-thirds majorities of African
4 Americans, two-thirds majorities of Democrats, two-
5 thirds majorities of Hispanics.

6 In fact, I will make a stipulation I
7 normally don't. If you can bring me evidence of a
8 major public policy question which has the levels of
9 support that we see on photo ID, 81 percent and
10 greater, I'll make a donation to your favorite
11 charity. You don't get beyond 81 percent. You simply
12 don't.

13 Andrew Young, who is the former U.N.
14 Ambassador and the former Mayor of Atlanta, makes a
15 very good point about photo ID. Of course we have to
16 make sure this is accessible. Of course we have to
17 make sure this is accessible. Of course we have to
18 make sure that it's free to anyone who can't afford
19 it. Of course we have to make sure that it's not
20 another barrier.

21 But there's also an advantage to photo ID.
22 In modern 21st Century America if you don't have photo
23 ID, you are cut out of the mainstream of American
24 life. You can't really travel. You can't really
25 apply for a job. You can't really do a lot of things

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1 in life that, frankly, would bring you into the
2 mainstream and make your life more rich.

3 Andrew Young points out we are helping the
4 poor. We are helping the indigent. We are helping
5 many people out of the mainstream of American life if
6 we get them a photo ID. They need to have it to be
7 fully participatory in America's life.

8 Election fraud, whether it's phoney voter
9 registrations, illegal absentee ballots, shady
10 recounts or old fashioned ballot box stuffing can be
11 found in every part of the U.S. Fraud can be found in
12 rural areas and in major cities. If you want to find
13 some interesting witnesses for voter fraud, I suggest
14 you go to St. Louis and Detroit where we've recently
15 had Democratic primaries for mayor.

16 In these Democratic primaries, the losing
17 candidates have presented some compelling evidence of
18 either massive voter official incompetence or outright
19 fraud. Freeman Hendrix, the losing candidate for
20 Mayor of Detroit in the Democratic primary in the
21 last election, says that the election was conducted
22 under conditions of massive fraud. There's an ongoing
23 FBI investigation into that, and he has called for
24 photo ID at the polls, and he's a Democrat and a
25 minority.

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1 Investigations of voter fraud are
2 inherently political because they often involve touchy
3 situations which people, frankly, don't want to
4 address fully, conditions that harken back to the
5 great debates we had over the civil rights struggle in
6 the 1960s.

7 And I want to address that because we
8 fought a great civil rights hurdle in the 1960s to
9 make sure that poll taxes and other barriers to voting
10 would be dropped and would never again stain America's
11 conscience. We need to continue that struggle. It's
12 one of the reasons we just extended the Voting Rights
13 Act for the next 25 years.

14 But I would remind people that there is
15 another civil right at stake here. When voters are
16 disenfranchised by the counting of improperly cast
17 ballots or outright fraud or, frankly, the
18 incompetence of election officials, their civil rights
19 are violated just as surely as if they had been
20 prevented from voting. The integrity of the ballot
21 box is just as important to the credibility of
22 elections as access to the ballot box is.

23 Voting irregularities have a long pedigree
24 in America, stretching back to the founding of the
25 nation. Many people thought that those bad, old days

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1 had ended, just as many people think that there no
2 longer is any form of voter intimidation.

3 That's not the case. Voter intimidation
4 does continue. Voter fraud does continue. Let me
5 give you an example of how historical ghosts can come
6 back to haunt us.

7 In 1948, pistol packing Texas sheriffs
8 helped stuff ballot box 13, stealing a United States
9 Senate seat and sending Lyndon Johnson on his road to
10 the White House. That's been documented in Robert
11 Caro's biography.

12 CHAIRMAN REYNOLDS: Less than two minutes,
13 sir.

14 MR. FUND: Amazingly, 56 years later came
15 the 2004 primary election in that same part of Texas
16 with Representative Sero Rodriguez, a Democrat and
17 chairman of the Hispanic Caucus in the U.S. House,
18 charged that during the recount a missing ballot box
19 once again appeared in south Texas with just enough
20 votes to make his opponent, the Democratic nominee, by
21 58 votes.

22 Political bosses, such as Richard J. Daley
23 or George Wallace, may have died, but they do have
24 successors. Even after Florida 2000, the media and
25 others tend to downplay or ignore stories of election

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1 incompetence, manipulation or theft. Allowing such
2 abuses to vanish into an informational black hole in
3 effect legitimizes them.

4 The refusal to insist on simple procedural
5 changes, such as requiring a photo ID, improving
6 absentee ballot procedures, secure technology, and
7 more vigorous oversight, accelerates our drift towards
8 more chaotic and contested elections.

9 In conclusion, I would remind you that I
10 never expected to live in a country where officials in
11 places like Miami and other cities would hire the
12 Center for Democracy, which normally oversees voting
13 in places such as Guatemala or Albania, to send
14 election monitors to south Florida and other places in
15 the 2002 and 2004 elections. Scrutinizing our
16 elections the way we have traditionally scrutinized
17 voting in developing countries is unfortunately a
18 necessary step in the right direction.

19 Before we get the clearer laws and better
20 protections, we need to deal with fraud and voter
21 mishaps. We need to have a sense of the magnitude of
22 the problem we have. I hope and trust that you as
23 Commissioners of this body can help in that process.

24 CHAIRMAN REYNOLDS: Thank you very much.

25 And I must say that I am struck by the

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1 amount of consensus that I heard from all of the
2 panelists. I think that everyone shares the concerns
3 regarding accessibility and also the integrity of the
4 -- maintaining the integrity of the ballot box.

5 At this point I'd like to open up the
6 floor for questions. Commissioner Kirsanow.

7 COMMISSIONER KIRSANOW: Thank you, Mr.
8 Chairman.

9 First of all, I want to commend the staff
10 for putting together a splendid panel, and I want to
11 thank the panelists for great presentations.

12 And I've got several questions, but I'll
13 just ask one for now. And this, I think, would be to
14 Mr. Hearne.

15 Section 2 of the 14th Amendment is often
16 viewed as a predicate for the proposition that states
17 you have the prerogative setting standards for voting
18 qualifications. Do you see any problem, 14th
19 Amendment problem, with having a uniform photo ID
20 standard nationwide?

21 MR. HEARNE: Well, certainly both in the
22 Senate as well as in the House there has recently,
23 within the past several months been two bills, one
24 passing the House, the other being the McConnell
25 amendment offered in the Senate that would have

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1 established a uniform federal ID.

2 Those were requirements that would have
3 applied only to federal elections. So in that sense,
4 it is something that would only be applicable under
5 those provisions to federal elections. I think that's
6 an appropriate action for the Senate, and I do not
7 believe it's inconsistent with the Constitution scheme
8 of devoting to states the responsibility or conducting
9 elections.

10 However, what I would also say is I would
11 also look at these kind of state election reforms as
12 examples that certainly the federal government can
13 embrace appropriately as well.

14 COMMISSIONER KIRSANOW: As you probably
15 know, at about the same time that that act was passed
16 by the House but was referred to the Senate, I think
17 it was the Georgia or Fulton County, Georgia court
18 struck down a very similar Georgia photo ID. It
19 wasn't simply photo ID, but that was the primary
20 component of that piece of legislation; struck it down
21 as violative of the 14th Amendment.

22 And I'm not sure if you're familiar with
23 the features of them. I'm pretty sure you are.

24 I think some of the rationale had to do
25 with the fact that those photo IDs could be obtained

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1 or would be obtained from DMVs, and that not every
2 state or -- I'm sorry -- not every county within the
3 state had a DMV, and so it put a disproportionate
4 burden on those residents of counties where there
5 wasn't DMV.

6 Given that that piece of legislation, that
7 state legislation in Georgia, at least is under
8 challenge, do you have any opinion as to whether or
9 not that legislation complies with 24th, 15th, 14th
10 Amendment or the Voting Rights Act?

11 MR. HEARNE: Certainly. In terms of
12 Georgia, I would note two things. Judge Murphy's
13 decision that you're speaking of, you know, there's
14 two pieces of Georgia legislation. I won't go through
15 the back and forth. The initial piece of the Georgia
16 photo ID legislation, the problem was, it was found by
17 the court, it was not as accessible to a lot of
18 people, as you mentioned, as it should be, and I
19 certainly support making sure that any photo ID is
20 accessible to everybody.

21 The reason Judge Murphy struck it down,
22 and he said in his opinion, there's no problem with
23 the state having photo ID. There was nothing wrong
24 with photo ID as the basis in his opinion. What he
25 said in his opinion was he said the problem here in

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1 Georgia was and the reason he enjoined it was you had
2 a photo ID requirement and then you have an election
3 two months later. And even if you make it free, not
4 everybody is going to be able to get it in two months.

5 So I would suggest instead a situation
6 similar to the Carter-Baker recommendations, which is
7 where you require photo ID in the federal legislation,
8 where you have a lead time of two years or so. You
9 know, so many be can discuss that, whether it's two
10 years or a year or three years or whatever, but a
11 reasonable period of time for somebody to obtain the
12 ID. That eliminates that objection.

13 So, again, the Georgia case did not
14 conclude that photo ID is impermissible. It just said
15 that when you have it, you had better make sure that
16 people have the ability to access that ID for free.

17 COMMISSIONER KIRSANOW: Right, and the
18 Federal Election Integrity Act, I think, doesn't
19 become operative until I think the 2008 election. so
20 it gives that two-year lead time you're talking about.

21 MR. HEARNE: That is correct, and so that
22 objection would be eliminated in that federal
23 legislation.

24 COMMISSIONER KIRSANOW: Thank you.

25 Thank you, Mr. Chairman.

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1 CHAIRMAN REYNOLDS: Commissioner Melendez.

2 COMMISSIONER MELENDEZ: Yes. Thank you
3 for coming today, first of all.

4 Because the identification card seems to
5 be what many people term intimidation, I think it was
6 mentioned at 81 percent or so of America prefers or is
7 in favor of an ID, national card or something like
8 this. I don't know if the other percent includes many
9 minorities, including Native Americans. There's
10 actually an article that came out a couple of weeks
11 ago. There was a report just two weeks ago of how an
12 elderly Navajo woman, a woman who only speaks Navajo
13 named Agnes Laughter was blocked from entering her
14 chapter house to vote because she didn't have ID.

15 By Arizona and federal law, she should
16 have been given a provisional ballot. She then would
17 have three to five days to return to the polls with a
18 form of identification. But when asked, Ms. Laughter
19 said she didn't know if she could get back with an ID
20 in three days' time, living in a remote area. So she
21 was told to wait outside.

22 Clearly, the polling workers did not
23 understand the law in this case, but this case also
24 shows the bigger problem that many Native Americans
25 face in new voter ID requirements. Unlike many other

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1 citizens, Native Americans often do not carry official
2 ID. They may not be able to use mail-in voting
3 procedures because they need language assistance, the
4 203 of the Voting Rights Act, and the remoteness of
5 many tribes make it particularly difficult to procure
6 official identification.

7 My question is in a scenario like this,
8 how can voter ID requirements be written or rewritten
9 so that it will allow American Indians, like Agnes
10 Laughter, to have their votes counted? That is a
11 scenario that has actually happened.

12 Anyone.

13 MS. BRAZILE: Well, just recently in the
14 State of Arizona, the Ninth Circuit Court of Appeals
15 rejected Arizona's Proposition 200 law that would
16 require voter identification at the polls on November
17 7th. It's already having an impact in Arizona and
18 other states where many of these state laws have been
19 overturned not just in Georgia, but also in Missouri.

20 Just recently Judge Callahan struck down
21 Missouri's new identification law saying it's an
22 unconstitutional infringement on the right to vote.

23 The problem you have with all of these new
24 so-called voter integrity proposals to stop voter
25 fraud is that it impedes citizens' access to the

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1 ballot. Many of these citizens don't have another day
2 to come back to show ID, and they are often told when
3 don't come with an ID that they must go home and get
4 an ID rather than, oh, here's a provisional ballot.

5 So this is, again, a problem that, you
6 know, we have to address and urge the citizens to
7 stay, to go ahead and fill out a provisional ballot
8 and to make sure that these poll workers who may have
9 not gotten the information, that they're not -- some
10 citizens are not required to show ID, if they showed
11 ID at the time of registration.

12 So the problem for that citizen, like many
13 other citizens is that unfortunately they would be
14 disenfranchised. They would be told to go home and
15 not come back, and they will not be given a
16 provisional ballot.

17 MR. FUND: I would just add to that I was
18 born in Arizona. I have many relatives there and am
19 certainly familiar with the situation regarding Native
20 Americans there. Some of those communities are
21 extremely remote.

22 There are some special provisions. I
23 would reiterate what I said. We certainly need better
24 trained poll workers. Obviously that was a
25 bureaucratic mistake. We need to correct that.

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1 Secondly, one of the things that's
2 certainly possible in those tribal areas is that you
3 can have some way if they forget their ID card, some
4 way that they can provide proof of it. The local
5 tribal office can have a fax machine. You could fax
6 a facsimile of the ID to the local authorities so that
7 they actually would not have to travel to a government
8 agency.

9 You can also perhaps have a tribal leader
10 vouch for them and sign an affidavit confirming that
11 they have their ID presented to them locally, and they
12 would confirm that to other government officials.

13 There are certainly ways to do that, but
14 I don't think you should take these unusual cases in
15 very small rural areas and make that as the basis for
16 a blanket condemnation of the photo ID law because I
17 think there are ways you can address it.

18 CHAIRMAN REYNOLDS: Professor Pastor.

19 DR. PASTOR: Yes. I think there are two
20 distinct issues that are at the heart of our
21 discussion right now on identification. First is
22 whether voter identification at the polls is a
23 legitimate and, indeed, a helpful way to improve the
24 integrity of the vote, as well as access.

25 And the second one is what's the best

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1 process. If you assume that the answer to the first
2 question is yes, this is legitimate, what's the best
3 process to achieve that outcome?

4 I think on the first it's helpful to
5 realize that of roughly 120 democracies in the world,
6 more than 100 have good, fraud proof voter ID. Mexico
7 undertook it with a very widespread, expensive
8 operation. They even have photo IDs on the
9 registration list. So Haiti did it. Iraq has done
10 it. I think the United States has the capability of
11 doing it, but we haven't done it before.

12 And I think there is a legitimate reason
13 to have people identify themselves as the person on
14 the voter list.

15 The second question is the harder one for
16 America right now, is how do we get there. There are
17 undoubtedly some people who think that pressing this
18 issue forward quickly may, in effect, restrict the
19 franchise. There's no doubt that if this is imposed
20 and you only have the two month time frame to get a
21 photo ID, that this is virtually impossible in many
22 cases.

23 So we need to both have a longer lead time
24 and, more importantly, the Carter-Baker Commission
25 made very clear states have to play an affirmative

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1 role in making sure that people who don't have
2 driver's licenses can get a free photo ID.

3 This is going to take time, and it's going
4 to be very expensive. When we explored different
5 options in the Carter-Baker Commission of how to do
6 this, we rejected a national identification card only
7 because we thought that if that's going to happen, it
8 should probably happen for security related reasons,
9 and it would be very expensive. We estimated it would
10 cost \$11 billion to do that.

11 It turns out that the real ID, which is
12 the instrument that the Carter-Baker Commission
13 recommended to be used may actually cost as much,
14 according to the National Association of Secretaries
15 of State, which would cause us all to rethink the
16 process by which we do this.

17 It won't be easy to do. There are many
18 people who don't have birth certificates, for example,
19 in this country, and getting one may not be easy in
20 all cases. But I think if this Commission on Civil
21 Rights were to recommend that photo IDs are a
22 legitimate form of identifying voters, but what's not
23 legitimate is to go ahead with this without a good,
24 extended process, without the adequate resources,
25 without an affirmative role by the states, then we

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1 shouldn't do it.

2 But if we view this as legitimate, we need
3 to find the resources to do so.

4 Now, in our recommendation, we suggested
5 using the real ID card, which is a driver's license
6 that is upgraded by the 2005 law. And we estimated
7 that roughly 88 percent of the eligible American
8 citizens have driver's licenses, which is more than
9 those who are registered. It's more like 72 to 73
10 percent.

11 So if, in fact, you used the driver's
12 license, the upgraded driver's license, the photo ID,
13 to register those additional people you've already
14 expanded the registration base.

15 If on top of that, you have an affirmative
16 role by the state to go out by mobile vans to old
17 homes, to minority communities, to places in which we
18 know are under registered, you offer still another
19 opportunity to expand the number of people who would
20 be registered and would be eligible to vote as well.

21 So, in effect, the ID with the right
22 system can be used to expand access to voting and
23 expand those who are registered, at the same time
24 improving the registration list beyond where it is
25 today.

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1 MS. BRAZILE: I just want to highlight
2 what Mr. Pastor was saying, and that is 30 percent of
3 Georgians over 75 do not have a driver's license. The
4 Brennan Center for Justice also concluded that fewer
5 than three percent of Wisconsin students -- that's
6 another state that's trying to go to ID -- less than
7 three percent of students have driver's licenses
8 listing their current addresses. The same study found
9 that African Americans have driver's licenses at half
10 the rate of whites, and the disparity increases among
11 younger voters or only 22 percent of black men age 18
12 to 24 had a valid driver's license.

13 So this could be, again, another form of
14 discrimination and disenfranchisement unless we have
15 a process that is fair and open to everyone and not
16 just to go to Ken and have the resources to purchase
17 an ID.

18 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

19 COMMISSIONER KIRSANOW: I just want to
20 follow up on what Professor Castor said in terms of
21 the cost of this.

22 I think when the Congressional Budget
23 Office had estimated how much implementation of the
24 National Federal Election Integrity Act would cost,
25 which act would provide ID for free to those who swore

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1 that they were indigent and could not afford one, and
2 the cost was estimated to be about \$20 per ID, they
3 thought that the overall cost of that based on current
4 likely voters and registrants would be about -- I may
5 be mistaken. I read this quite some time ago -- in
6 the neighborhood of \$300 million.

7 But you said that you thought that the
8 real ID component would cost \$11 billion, and I'm
9 curious as how you came up with that estimate.

10 DR. PASTOR: No, I didn't. I was
11 referring to a report that's just come out by the
12 National Association of Secretaries of State and
13 National Governors Association, as well. I think the
14 problem is that when the real ID Act was passed, I
15 think they clearly underestimated. I mean, it was to
16 a certain extent an unfunded mandate. It shifted the
17 burden to the states to come up with the process by
18 which to determine who would get the photo ID and what
19 the terms would be.

20 The Department of Homeland Security has
21 the responsibility to set guidelines for determining
22 lawful status. Up until this moment, they still have
23 not done that. So we don't know for certain exactly
24 what is required of the states, and we won't know
25 until the Department of Homeland Security makes it

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1 clear how to determine lawful status, what people need
2 to do to show that, and how much it will cost for the
3 states to do it.

4 So we have two very wide estimates, the
5 one that you mentioned, and the one that's just come
6 out in this report, but we really don't know what the
7 cost is because the Department of Homeland Security
8 has still not set the guidelines for determining who
9 gets a real ID card.

10 CHAIRMAN REYNOLDS: Okay. Do states have
11 standards for hiring poll workers?

12 I mean specifically what I specifically
13 have in mind are situations where you have polling
14 workers who consistently give bad advice or make
15 mistakes or who intentionally deceive people, and so
16 are there standards for deciding who gets to become a
17 poll worker? And are there any type of sanctions for
18 the inability to correctly apply the rules?

19 And that's for anyone.

20 MR. FUND: Well, the most important thing,
21 of course, is the level of training, and as I
22 mentioned, we're seeing a growing shortage of poll
23 workers around the country because people lead busy
24 lives and increasingly it's left to the retired. And
25 many of them, with the growing complexity of elections

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1 and the growing burdens of trying to comply with all
2 of these laws and regulations that have been heaped on
3 them, don't want to do the job anymore, and we frankly
4 have to invest more in our poll workers.

5 Right now many states pay them \$20 in cab
6 fare or less. Some states do a better job of that.
7 I think that can be encouraged. We also encourage
8 young people, college students and high school
9 students to participate perhaps for credit, as well as
10 for some compensation.

11 The easiest way to make sure that a poll
12 worker does not misinterpret the rules or make a
13 foolish error which prevents someone from voting is to
14 have more than one poll worker there who has been
15 adequately trained. Therefore, they can check each
16 other.

17 It's highly unusual in sophisticated
18 precincts where you have several poll workers that a
19 poll worker will turn someone away and not be
20 countermanded by the supervisor or someone else who
21 usually has a much higher level of training.

22 I'm not saying that mistakes don't happen,
23 but I'm saying there are safeguards that can be built
24 into the system with enough resources and, frankly,
25 enough training that will minimize that to a very

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1 large extent.

2 MS. BRAZILE: And I want to say that, you
3 know, I've been an election day volunteer on numerous
4 occasions when I wasn't working for a particular
5 campaign or candidate, and many of these poll workers
6 are, as John mentioned, honest, decent Americans that
7 they're trying to do the right thing, but
8 unfortunately many states and counties do not have the
9 resources to properly train them on new election
10 procedures, on new election technology or, you know,
11 essentially in some cases many of them are overwhelmed
12 by just the number of people who are showing up now
13 and voting.

14 So I don't want to put all of the burden
15 on them. They are good, wonderful Americans who are
16 often in many cases volunteering their time with a
17 couple of dollars for cab fare and lunch, but we
18 really need to upgrade and professionalize our voting
19 operations and our voting apparatus across the
20 country.

21 MR. HEARNE: Mr. Chairman, I would echo
22 that observation. My experience with poll workers is
23 that these are patriots. These are people who are
24 there. What limited resources are paid to them,
25 they're not there for that. They're there because

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1 they believe in the system, and they're trying to
2 contribute.

3 I would note that many states though have
4 rules that make it very difficult. For example, an
5 election worker, a poll worker can only be from a
6 certain jurisdiction, which limits the number of
7 potential people who can do it.

8 Some states have a requirement that says
9 if you're going to be a poll worker, you have to work
10 the whole day, which means you are sitting from 7:00
11 a.m. until 7:00 in the evening. Some reforms in that
12 process. Again, the Carter-Baker recommendation, as
13 a number of them, would make it much easier for the
14 election officials to find poll workers and for the
15 poll workers to do their job.

16 One final point also in the Carter-Baker
17 recommendation is when you do have a problem, and I
18 would echo that the poll workers themselves, it's more
19 often if there is a problem that the poll workers are
20 responsible for, it's more often because of
21 incompetence or poor training, to have the ability of
22 the parties to participate in the candidates, to
23 participate with observers who are there in order to
24 monitor the process.

25 I know the Democrat party as well as the

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1 Republican party generally have observers and the
2 right under different states to put observers in
3 polling places in order just to monitor the process.
4 So if a problem does come up, you can get attention to
5 it quickly. If a voting machine breaks down, you want
6 to address it quickly before people are
7 disenfranchised.

8 DR. PASTOR: Yes, I would agree with what
9 has been said, but the average -- that poll workers
10 are dedicated individuals -- but the average time for
11 training is about two hours, and when you realize the
12 rules differ so dramatically from state to state and
13 county to county, it's impossible for a poll worker to
14 really know all of the rules properly.

15 When we send election observers around,
16 and I went around with them in '94, we just focus on
17 two or three issues like provisional ballots. Every
18 single polling site I went to had implemented those
19 provisions differently.

20 And the other thing about poll workers is
21 the average age is 72 years. So if you're talking
22 about people having to be there from 7:00 to 7:00 p.m.
23 and then work to reconcile the vote count at the end
24 of that, these people are very tired at the end of
25 that day. It's very hard.

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1 At American University we're recruiting
2 100 poll workers to go out to our polling sites in
3 Washington to work with D.C. elections in order to get
4 both younger people in there and people who are a
5 little bit more technologically advanced than the
6 average 72 year old.

7 In Mexico, they look at poll workers like
8 they look at jury duty. It's a civic obligation. Ten
9 percent of the people in a precinct are called to be
10 trained. From that they take a small percentage of
11 the very best people. Average citizens, totally
12 trained when they go out there on election day. That
13 would be a good model for us as well.

14 We need to focus on poll workers. You're
15 absolutely right to focus on that right now. We're
16 not doing enough to train them. We're not doing
17 enough to get citizens actively engaged in that, and
18 frankly, the decentralization of our system makes it
19 very hard for poll workers to really know what the
20 proper rules are.

21 CHAIRMAN REYNOLDS: Commissioner Taylor.

22 COMMISSIONER TAYLOR: Thank you. And
23 thank all of you all for coming.

24 I wanted to actually echo a lot of
25 comments that have been made about the poll workers,

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1 and I come at this having served as counsel to Bob
2 McDonnell when there were over a million votes cast,
3 and as you all probably know, the margin of difference
4 was 360 votes, and it was an historic event, and being
5 a lawyer, I was, frankly, glad to be involved and in
6 the middle of it.

7 But I'm glad to say that I saw no fraud in
8 Virginia. I saw a lot of sloppiness, and at the poll
9 worker level what I saw was a lot of folks who were
10 well intentioned, well meaning, hard working senior
11 citizens who were tired, confused, and you are only
12 able to get to the nub of the matter when you had the
13 partisans on both sides looking over their shoulders,
14 but that only happened during the recount process
15 really.

16 So I want to echo all of those comments
17 because it was really my sense, and it really
18 manifested itself, I thought, in the fluctuations we
19 saw, at least, from the more sophisticated
20 jurisdictions like an Henrico County outside of
21 Richmond, which is somewhat affluent. Very little
22 fluctuations in voting patterns versus the City of
23 Richmond or Newport News, where you would flip two or
24 3,000 votes, and you would dig into it, and it was
25 just error because of the training and different

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1 things in those communities.

2 So at least in Virginia, at least, I
3 really saw the problem one of training.

4 One thing that bothered me, however,
5 related to electronic voting because the question --
6 and this was a question the three-judge panel had to
7 grapple with -- in Virginia law at least there was not
8 a requirement that you had to show error relative to
9 this electronic voting machine. In fact, the law was
10 silent on the issue, and that put the issue before the
11 three judge panel.

12 I wanted to get all of you all's thoughts
13 on electronic voting machines and whether or not you
14 would, for example, require some type of paper trail
15 be mandated or, if not, whether or not for purposes of
16 a recount or questioning the vote tally, you would
17 require some type of finding of error relative to that
18 electronic machine.

19 It really is a question, and I don't know
20 where most states are, but it's a question that has
21 not been answered in Virginia.

22 DR. PASTOR: Well, since the year 2000,
23 the number of machines that are electronic have gone
24 from roughly ten percent to 40 percent. If you
25 include optical scans as electronic machines, it has

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1 gone to 80 percent.

2 So we focused on that to a great degree,
3 and again, to realize the vulnerabilities of
4 electronic machines.

5 In the Carter-Baker Commission we
6 recommended that there should be a voter verifiable
7 paper audit trail because as we know, electronic
8 machines like computers do freeze up, and if you don't
9 have a paper audit trail, you don't know if you've
10 lost votes. You don't know if votes have been
11 manipulated.

12 We also recommended that there be an audit
13 of a certain percentage of those machines, say, two
14 percent, so as to assess whether or not the machines
15 and the paper coincide with each other and to be able
16 to test that over time so that there wouldn't be a
17 bias in that system.

18 I think these are very important steps
19 that need to be taken with regard to electronic
20 machines because there's a huge accident waiting to
21 happen.

22 In North Carolina, there was a vote on the
23 Agricultural Commissioner in 2004 in which the number
24 of votes separating the two leading candidates was
25 less than the number of votes that were lost as a

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1 result of electronic machines that broke down, and if
2 we think of that perhaps happening on a statewide or
3 a national basis, this would be a terrible tragedy.

4 So we need to move quickly to think about
5 implementing a verifiable paper audit trail and also
6 to make sure that the source codes, that there's
7 adequate oversight by state election commissions and
8 by the election assistants commission to make sure
9 that the source codes of those electronic machines
10 cannot be manipulated and won't be manipulated.

11 MR. FUND: I would just add to that every
12 time that you have had technological advance in vote
13 counting, you have brought with it suspicion and
14 concerns, many of them legitimate, some of them
15 conspiratorial. Electronic voting machines are no
16 different.

17 We certainly have to spend more time and
18 attention. I've examined the background of some of
19 the procedures of the voting machine companies. Some
20 of these companies I, frankly, wouldn't hire. I think
21 it's a relatively new industry. There are going to be
22 some new entrants. I think quality control has to
23 improve.

24 One of the things we have to always ask
25 ourselves is why is it there are these concerns about

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1 electronic voting machines? In part it's because
2 unlike ATMs, voting machines are produced on a much
3 cheaper basis with much less sophistication.

4 In fact, the average electronic voting
5 machine only costs about 15 percent as your local ATM
6 machine bill because the ATM machine deals with money.

7 I would submit to you.--

8 COMMISSIONER YAKI: Of course, that's not
9 what they sell it to the local government at.

10 MR. FUND: Of course not.

11 (Laughter.)

12 MR. FUND: That's why we need competing
13 bids.

14 I submit the votes are at least as
15 valuable as money, probably far more so. We need to
16 spend the resources to make sure the electronic voting
17 machines do what they say they do.

18 Now, having said that, clearly I think
19 some of the fears about Manchurian computer
20 programmers in the back room manipulating the system
21 and coming up with completely different results are
22 somewhat overblown. I would remind you we have used
23 optical scan computing equipment to count the votes
24 from optical scan ballots from 25 to 30 years now.
25 There has not been one documented case of those

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1 counting systems, of those computer systems, which
2 bear a lot of resemblance to the electronic voting
3 machine computers, ever having been manipulated to
4 change an election result. There has not been one
5 documented case of that. So let's put this into
6 perspective.

7 I'd also cite you Joe Andrew who is the
8 chairman of the Democratic National Committee. In
9 fact, he was hand picked by Bill Clinton. He is the
10 only chairman I know of a national political party who
11 comes from a technology background, and he has
12 cautioned us that while there certainly are legitimate
13 concerns over electronic voting machines, not to go
14 too far.

15 He mentions, for example, that the
16 Leadership Conference of Civil Rights has generally
17 supported electronic voting because study after study
18 has found that the voters who are most likely to be
19 helped by these machines are (a) the disabled because
20 they can vote without assistance; (b) the less
21 educated, the machines resemble ATMs and are very
22 easily used; (c) lower socioeconomic groups who often
23 trust machines more than people; (d) the truly elderly
24 because you can increase the type size; and of course,
25 people who do not have English as a first language

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1 because the machine could easily be programmed to
2 accommodate any number of languages, and citizens are
3 often more comfortable voting on those machines.

4 So we have to get the machines right, but
5 the machines are a significant technological advance.
6 If we get it right, they're going to make voting a lot
7 easier and a lot more accurate.

8 CHAIRMAN REYNOLDS: I have a question for
9 Professor Pastor.

10 Wading through the Carter-Baker report,
11 one of the more significant recommendations is this
12 notion of moving responsibility from localities to the
13 state and then further up to the federal government,
14 this concept of interoperability.

15 It seems to me that in theory, I think,
16 that, well, it's an interesting idea, but if there is
17 resistance from the localities, from this shift in
18 power, in responsibility, I don't see how it will
19 work.

20 Could you just discuss how we would
21 overcome the barriers to the localities wanting to
22 maintain the traditional control and responsibility
23 that they've had?

24 DR. PASTOR: It's an excellent question,
25 sir, and I think it really goes to the heart of our

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1 electoral problems because in the United States our
2 electoral system is so decentralized that it has
3 become dysfunctional. We don't have one election for
4 President. We don't even have 50 elections for
5 President, which is what the founding fathers
6 anticipated in the Constitution. We actually have
7 13,000, and we discovered that, of course, in the
8 State of Florida in 2000 when the counties were the
9 ones that were really in charge, and they were often
10 implementing basic rules and standards in very
11 different ways from each other, and were responsible
12 for everything from the design of ballot to the
13 training of poll workers and everything else.

14 In the Help America Vote Act, by giving
15 money to the states through the Election Assistance
16 Commission, I think the intention was to help
17 encourage the states to impose uniform standards and,
18 most importantly, a single registration list which
19 would be interactive and which would be top-down.

20 CHAIRMAN REYNOLDS: Have all of the states
21 accepted money?

22 DR. PASTOR: All of the states have
23 accepted the money, but they haven't all implemented
24 it in the way that I believe it was intended with
25 regard to registration lists.

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1 One of the biggest problems we have with
2 the registration list that Thor and others have
3 pointed to is that up until very recently most of the
4 registration lists were all decided at the county
5 level. The states had devolved responsibility to the
6 counties and municipalities and hadn't integrated the
7 registration list, and as a result you had grossly
8 inflated registration lists or inaccurate registration
9 lists.

10 The idea of HAVA was that there should be
11 a statewide interactive top-down registration list.
12 It's not clear that all of the states have done that.
13 The states had devolved authority and responsibility
14 for elections for one good functional reason, which is
15 that each county has to concentrate on the bottom of
16 its electoral ballot, and therefore, you need to
17 program at that level.

18 And, secondly, they didn't want to put any
19 money behind this either, just as the federal
20 government didn't put one cent behind any of these
21 elections until the Health America Vote Act.

22 But if we are going to really modernize
23 our electoral system, it's our belief that the states
24 are going to have to assert a lot more responsibility
25 for this process and also to transform the

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1 administration of elections so that it's more
2 nonpartisan rather than bipartisan; that it's
3 impartial; that it's autonomous, it's independent, and
4 it's professional.

5 All of these qualities don't really exist
6 in many of the states right now. So I think
7 increasingly we feel the importance of focusing on
8 administration and encouraging the states to play the
9 role that the founding fathers initially intended for
10 them to play, which is to be primarily responsible for
11 statewide systems rather than to decentralized the
12 process to the locality level.

13 CHAIRMAN REYNOLDS: Commissioner Yaki.

14 COMMISSIONER YAKI: Yes, thank you very
15 much, Mr. Chair. Thank you very much, panelists.

16 I guess I'll just be out front. I start
17 off looking at this as even in this discussion today
18 there's been kind of a kitchen sink approach to the
19 whole idea of there's something wrong with the way we
20 vote, and people throw out voter regs. People throw
21 out polling fraud, absentee, whatever it is. I'd like
22 to try and parse that out a little bit, much as the
23 U.S. Election Assistance Commission tried to parse it
24 out.

25 And, Mr. Chair, I don't know what our

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1 jurisdiction is over that or not, but if that report
2 is being bottled up, I wonder if we can use our
3 subpoena power to get it out.

4 CHAIRMAN REYNOLDS: I agree.

5 COMMISSIONER YAKI: But I just want to
6 let's go through it piece by piece. There's been a
7 lot of talk about deadwood on the voter reg. rolls,
8 more people than there are actual numbers in the
9 population. What hard evidence do we have that any of
10 that has resulted in people widespread, rampant,
11 people voting who shouldn't be voting because of where
12 they are on the registration list?

13 And let me just step back and say I know
14 this stuff from my own experience pretty well in
15 California, having run and won, and done many things
16 in many elections, watched how county registrars have
17 to validate the incredible initiative process in
18 California. I've seen Bruce Springstein registered
19 five times. I've seen Mick Jagger registered. I've
20 seen all of these people who put their names on. They
21 generally get caught.

22 But I'm just wondering what do we know?
23 Where's the hard evidence saying that there's a
24 correlation between these vast disproportionate
25 numbers of registration in an area and actual voter,

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1 people using those names and going to the polls and
2 voting?

3 MR. FUND: Well, I'm a Californian, and
4 I'll just give you two examples very recently from
5 California. The City of Compton, where the mayor's
6 race has been embroiled in all kinds of federal
7 investigations. There have been documented examples
8 of massive fraud using absentee ballots, and the City
9 of Industry where there's an ongoing federal
10 investigation along with a state investigation that
11 the city has basically suppressed voter registration
12 from some candidates. It's a small area, largely
13 commercial. The city council is in league with
14 various interest groups there, primarily the large
15 commercial industry, to prevent people from voting and
16 to prevent them from ousting the incumbent
17 establishment.

18 Those are just two cities in one state.

19 COMMISSIONER YAKI: Okay, fine. But I
20 think you just proved my point because you start
21 talking about -- the first thing you started to talk
22 to was absentee fraud, which is a wholly different
23 creature than registration fraud.

24 You don't have to have --

25 MR. FUND: It was also registration fraud

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1 in Compton, and I can give you the specifics on it.

2 COMMISSIONER YAKI: Well, then I'd like to
3 see, one, how it's done and, two, what kind of
4 prosecutions have been brought. I mean, do you know
5 how many prosecutions have been brought over time?

6 MR. FUND: No. Let me be very clear about
7 this. One of the things that we have found, at least
8 I have found in my interviews with prosecutors are
9 they put a lot of these cases on the bottom of their
10 pile, and for a very simple reason. It's a political
11 hot potato. You are guaranteed to anger half of the
12 political establishment if you bring a voting fraud
13 case. If you prosecute a Republican, you're going to
14 anger the Republicans. If you prosecute a Democrat,
15 you're going to anger the Democrats. And, of course,
16 there's the racial component. If you investigate
17 areas in which some people might be involved, you're
18 going to be often accused of having ulterior motives
19 in that respect.

20 I have quotes in my book from several
21 prosecutors who say they are very leery of prosecuting
22 these cases. One of the things that you find even the
23 prosecutions we do have, almost all of them are plea
24 bargained so that the person will serve only community
25 services or perhaps a fine. There are almost no cases

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1 in which someone actually goes to jail.

2 I have talked to poll workers and people
3 involved in the business who say the prosecution of
4 voting fraud is at such a low level and so seldom
5 leads to jail time that, frankly, for many people it's
6 just the cost of doing business.

7 COMMISSIONER YAKI: But let me just ask
8 you this then. In the context of absentee voter
9 fraud, how does an ID card do anything to prevent
10 that?

11 MR. FUND: Well, you need to have both,
12 and I said that in my testimony. Photo ID at the
13 polls is important. I also think we frankly, as a
14 public policy question need to ask ourselves do we
15 really want the situation in which every year there's
16 a growing number of people who cast absentee ballots.

17 In 1980 only five percent of Americans
18 voted absentee or early. Now it's between 25 and 30
19 percent. Oregon has abolished the polling place. You
20 wake up on election day in Oregon. If you haven't
21 voted by mail, you're going to find it very difficult
22 to vote.

23 Washington State is moving in that
24 direction. California, over 40 percent of the ballots
25 are cast absentee. I think we have to question

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1 whether or not we want to continue that process and
2 literally have people voting over an entire month.

3 You know, when does election day become
4 election month, and is that, frankly, constitutional?
5 That issue, I think, will eventually have to be
6 addressed with the courts.

7 We need ballot security for absentee
8 ballots as well. Professor Pastor has mentioned that
9 you can take the signatures on an absentee ballot and
10 compare them for their digital equivalent. You can
11 also using very simple technology require someone to
12 put their thumbprint on a ballot and have that as a
13 permanent record to see if the absentee ballot matches
14 the real person.

15 You need both. You need --

16 COMMISSIONER YAKI: Well, let me go to the
17 second question then. I mean, one of the things that
18 the Election Assistance Commission report seemed to
19 indicate is that there is a greater potential for
20 absentee ballot fraud amongst all the different things
21 that people talk about.

22 Where is the evidence of polling place
23 fraud, of people on election day assuming different
24 identities and going?

25 And I guess part of it is, you know, all

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1 of this gets to the little outrage part of America,
2 which is why is someone doing that, but I guess part
3 of it has to do with context as well. I mean, with
4 all due respect to Mr. Pastor, I get a little offended
5 when someone says, "Well, Mexico does it better than
6 us."

7 Well, if you had Mexico's voting system 20
8 years ago, you darn well would have changed it
9 radically because of the way that elections were
10 administered, but taking that aside, you take these
11 instances, and they become anecdotal. They become,
12 well, I know this person or Mickey Mouse came or what
13 have you.

14 The fact is over how many periods of time
15 and over how many electoral votes have been cast in
16 the past ten years and what percentage of those can
17 anyone estimate. What percentage of those had to do
18 with out and out, quote, unquote, fraud, and then what
19 type of fraud?

20 Because, again, that goes under the
21 question of why are we choosing all of these different
22 remedies that may not be appropriate for what it is
23 we're trying to guard against.

24 MR. HEARNE: Let me answer your question.

25 CHAIRMAN REYNOLDS: I'd just like to add

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1 Commissioner Yaki raised a very interesting point, and
2 I would like to add that I think that he's basically
3 saying that this is an empirical question, and I think
4 that that question could be posed to both sides of the
5 equation, both voter intimidation and voter fraud.

6 Do we have a baseline? Do we have
7 sufficient evidence to quantify the nature of the
8 problem?

9 That's one question, but I guess the
10 follow-up thought is that in this era of very close
11 elections, it doesn't matter because even if it is a
12 very small percentage, it could make a significant
13 difference on whether the President is President Gore
14 or President Bush.

15 MS. BRAZILE: But so could a machine that
16 is not functioning properly.

17 CHAIRMAN REYNOLDS: I agree.

18 MS. BRAZILE: So could a machine that
19 could be tampered by using a palm device. That's why
20 all of these issues should be looked at in terms of
21 electoral reform comprehensive to clean up our
22 electoral process.

23 But I would urge the Commission to have
24 that report released as soon as possible from the
25 Election Administration Commission. We should

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1 denounce voter fraud wherever we see it. If we know
2 about a fraud, if we see it happening, if we see some
3 citizens attempting to vote twice, there is a penalty
4 for anybody attempting to hack the system or to
5 register twice or vote twice, a penalty, \$5,000.
6 That's why voter fraud is rare. That's why you rarely
7 read of instances of voter fraud.

8 And let me just say in 2000 in Missouri,
9 the Secretary of State claimed that 79 voters were
10 registered with addresses at vacant lots, but there
11 was an investigation later, and they found out that
12 they were people who actually lived in those houses.

13 The problem we have in America today is
14 that our voter registration lists are incomplete.
15 They're inaccurate, and they haven't been cleaned in
16 such a long time who knows who's on those. I'm sure
17 Bruce Springstein, Mary Poppins, Santa Claus and
18 everybody else. Until we get serious about how we
19 conduct elections in this country, we will continue to
20 have problems.

21 MR. HEARNE: Mr. Chairman, let me answer
22 the one question.

23 Commissioner Yaki, you asked the question
24 about how many people have voted in person illegally
25 that ID would have prevented. Detroit Free Press did

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1 a study in Michigan last December. They found more
2 than 120 people cast ballots in the name of dead
3 people.

4 Now, you might say 120 fraudulent votes
5 that could have been prevented by ID aren't enough,
6 but tell that to the citizens of Washington State
7 where they decided their governor's race by about that
8 margin.

9 You find very close as we saw in Florida,
10 thin margins, as Chairman Reynolds is noting. Thin
11 margins in elections are deciding not only who's our
12 President, who's our governor, who's our Senator being
13 decided. So 120 votes, as were found by the -- and
14 that was in a limited sample in Michigan.

15 Now, by definition, a ballot cast at a
16 polling place in the name of a dead person is a ballot
17 cast fraudulently by somebody who, if they had to
18 present a photo ID, would likely have been prevented
19 from doing it. So it is a kind of reasonable common
20 sense reform to stop documented cases of vote fraud.

21 Donna, you mentioned the case in Missouri.
22 With the study that we did after the 2000 election,
23 that election by the Democrat Secretary of State, at
24 that point Becky Cooke, found that 48 people just
25 appeared at different polling places and cast a ballot

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1 illegally without ever being authorized to do so.

2 So it is a documented fact when we look
3 for it that it happens. Now, many states don't have
4 an ID requirement at all. So it can go on very
5 easily. The only thing in St. Louis, Missouri that
6 would prevent Ritzy the Dog from casting a ballot that
7 would void mine or some other voter in Missouri is the
8 fact that somebody coming to the polling place
9 pretending to be Ritzy Mekler, who we found was a
10 cocker spaniel, had to first provide an
11 identification.

12 That's why it's a confidence building.
13 That's why we actually find that these kind of ID
14 requirements, again, when we make sure everybody gets
15 one and we have it for free; when we have that, you
16 find it actually increases participation in the
17 elections as the Professor Lott study found.

18 MR. FUND: Donna is, I think, very right.
19 Not all of the allegations ultimately pan out, and I
20 think we have to be discriminating.

21 However, remember we're dealing both in
22 the case of voter intimidation and in the case of
23 voter fraud with illegal behavior. So just to point
24 to the number of prosecutions, just to point to the
25 number of people who caught at it, since it's illegal

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1 behavior, you're not going to catch the entire
2 problem.

3 To say that it's rare is the same thing as
4 to say that we don't know the full extent of the drug
5 problem in this country because it's illegal. You're
6 not going to know all of it because people are not
7 going to volunteer information about it. It's in the
8 shadows.

9 I've actually seen academics --

10 COMMISSIONER YAKI: I really have --

11 MR. FUND: I've actually seen academic
12 studies --

13 COMMISSIONER YAKI: To compare voting to
14 the drug problem is just a stretch.

15 MR. FUND: Commissioner Yaki, it's illegal
16 behavior and it's in the shadows. One of the things
17 I have seen academic studies that have actually
18 purported to show that the level of --

19 COMMISSIONER YAKI: So is taking a bribe.
20 Go ahead.

21 MR. FUND: To repeat, I have seen academic
22 studies that have actually purported to show that the
23 level of voter fraud in this country is very small,
24 simply by going out and interviewing people in the
25 election process.

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1 I'm sorry. You're going to have people
2 who commit these activities, whether they're
3 intimidation or whether they're fraud, who are not
4 going to admit it, and in addition, the election
5 officials are not exactly going to demonstrate or talk
6 about the frailties in their system because that
7 reflects poorly on their own behavior and their own
8 performance.

9 COMMISSIONER YAKI: I just want to ask one
10 question about the photo ID bill that's floating in
11 the Senate now after it passed the House, and I'd like
12 to get your honest opinions about it because I seem to
13 have heard that all of you, and maybe I'm wrong,
14 believe that, one, it's a good idea; two, there's some
15 issues regarding accessibility -- I'm not saying all.
16 You know who I'm talking to, Ms. Brazile -- there are
17 issues of accessibility that you think might be
18 something that would be worth addressing.

19 So one of the question is whether or not
20 you think that having this kind of new photo ID,
21 whether it's getting a birth certificate, whether it's
22 producing this kind of stuff, given the statistics and
23 given the fact that when you look at the demographics
24 of who would probably be impacted the most, it's lower
25 income. It's minorities. It's people whose English

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1 is not their first language.

2 How do we get accessibility to those
3 folks? How do we do it in terms of money? How do we
4 do it in terms of outreach?

5 And given the fact that HAVA has been
6 under funded by \$800 million anyway, what realistic
7 shot is there that that's ever going to happen and
8 should we care, which I think we should.

9 DR. PASTOR: I think we should as well.
10 Let me answer both your first question and the second
11 question.

12 The first question is how much fraud is
13 there out there. My answer to that question is we
14 don't know. We don't know. I mean we could know if
15 we really cared by doing something very simple that
16 most countries do, which is they have a poll book at
17 each election site, and they register every
18 irregularity that occurs during the course of the day.

19 For example, one time I went to vote, and
20 I found that somebody had already voted under my name.
21 Now, I had no recourse at that point to find out why
22 this had occurred, whether there was some error or
23 whatever else, and the polling station itself didn't
24 keep any record of it. So we wouldn't know whether
25 it's a large number, whether it's no number or

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1 whatever.

2 My personal view is that we're likely to
3 see a small number if it occurs. We don't know how
4 much, but even a small number is important because if
5 there's a close election, it makes a big difference,
6 and it's also --

7 COMMISSIONER YAKI: And I'm not
8 disagreeing with that.

9 DR. PASTOR: Okay.

10 COMMISSIONER YAKI: The second question is
11 a critical one that you just asked, which is if these
12 voter ID requirements are legislated without adequate
13 funding, without adequate time to make sure that they
14 are implemented in a way that's fair, accessible, and
15 indeed, can enlarge the area of registration, is this
16 a good idea?

17 And my answer is no, and I think that's
18 where the Carter-Baker Commission -- the Carter-Baker
19 Commission was very clear in saying that we should do
20 a voter ID, but we have to do it in the right way, and
21 the right way means to expand the registration list to
22 make sure that a photo ID is accessible to people who
23 normally wouldn't have it or have a driver's license
24 or whatever else.

25 So I think if this panel could all agree

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1 that those two elements are absolutely central to
2 going forward with this and that you can't go forward
3 with one without the other, than I think that would be
4 a step forward.

5 I think if this Commission were to issue
6 a similar statement along those lines, I think it
7 would be very positive, too.

8 MR. FUND: I would agree briefly with Bob
9 Pastor that the two do go together, that you do, in
10 fact, need to make the ID accessible, and I think that
11 that's a concern. I mean, as the judge in Georgia
12 said, there's no problem with ID. The issue is to
13 make sure that it is available to everyone.

14 Let me cite the Missouri case. In
15 Missouri, the Missouri legislature provided for nine
16 mobile vans to go around particularly to nursing
17 homes. They also provided that there were more than
18 200 locations throughout the state, one in every
19 county, and those mobile vans would go into particular
20 neighborhoods, and there was a two-year transition
21 period.

22 Some may say they should have done even
23 more to provide the free ID. My point is that when
24 the legislature makes that kind of accommodation to
25 make sure everybody does have free ID, that should

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1 take the partisanship out of the equation when we make
2 sure that people do have it.

3 And as Andrew Young said, that's why he
4 embraced the concept, because what we're doing is
5 we're going to those very same people, and we're
6 saying not only do you now have a free ID that allows
7 you to vote. It will increase your participation and
8 confidence in voting.

9 But it will also allow you to participate
10 in all the other things that we do in modern life that
11 require an ID. That's a good thing. That's a good
12 thing to enable and empower those people.

13 PARTICIPANT: A quick question. when you
14 say "free ID," let me just ask you: do you mean that
15 the actual ID itself is free? If you need any
16 predicate documents to get that ID? How does that
17 work out?

18 MR. FUND: Yeah, there's two things. One,
19 in our report we decided to build on the real ID law.
20 The real ID is the driver's license. Okay? Now, a
21 lot of states require you to pay for a driver's
22 license and presumably you would do that, but if you
23 don't have a driver's license, then we recommend the
24 equivalent of the real ID, which would be given to
25 people free, which would serve the same purpose, not

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1 for driving but for identification purposes.

2 Secondly, it's very important that this
3 affirmative role by the state has to be incorporated
4 in it. Historically the United States is one of the
5 few democracies that doesn't go out to register
6 voters. It's passive. It lets voters come in.

7 We take this a very large step, and
8 Republicans, including Secretary Baker, accepted this
9 importance of this step, for the state to play an
10 affirmative role to go out with mobile offices to
11 certain areas which traditionally are likely to not
12 have identification cards of any kind. So that
13 requires additional money to do that and additional
14 personnel and resources as well to do that properly.

15 MS. BRAZILE: The Constitution prohibits
16 any form of payment in terms of voting, and as long as
17 there are millions and millions of Americans who do
18 not have access to getting the form of ID that would
19 make them, therefore, eligible to vote and
20 participate, we should not impose this burden on
21 states and local government, which by the way have
22 failed already in implementing HAVA.

23 By not fully funding HAVA and the mandates
24 that they've imposed on the states, what we have now
25 in some states, we have just inconsistency in how the

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1 rules are applied in different areas, different
2 counties, different neighborhoods.

3 So I'm opposed to the real ID provision
4 until we have such a system in place so that every
5 American has access to it and not just some Americans.

6 CHAIRMAN REYNOLDS: Commissioner Melendez.

7 COMMISSIONER MELENDEZ: Yes. The Election
8 Assistance Commission has that people support stronger
9 criminal laws and increased enforcement of existing
10 laws with respect to both fraud and intimidation.
11 Sometimes it seems like they're focusing on fraud
12 investigations, but little is done on intimidation,
13 that people direct you to the wrong polling place and
14 nothing really -- they're not held responsible for
15 those things.

16 The question is what additional criminal
17 laws are needed and how can this be made a high
18 priority for the Department of Justice.

19 MR. FUND: Well, I would just submit that
20 I think resources are spent on tracking down voter
21 intimidation. If you go over to the Justice
22 Department, the Civil Rights Division, you will find
23 dozens and dozens of lawyers there, close to 200, and
24 their responsibility is to make sure that the Voting
25 Rights Act is enforced, and to make sure that

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1 prosecutors go out and investigate claims.

2 A task force was sent down to Florida
3 after 2000 by Attorney General Janet Reno. There are
4 a lot of people there, but if you want to find an
5 attorney there whose sole job is to investigate
6 allegations of voter fraud at the federal level,
7 you'll find one human being, one person.

8 So I would submit to you we need resources
9 spent on both, but I think if anything there's an
10 imbalance now.

11 MS. BRAZILE: There's no imbalance.
12 There's no imbalance. On election day both in 2000
13 and 2004, there was direct contact to the Justice
14 Department on instances of voter intimidation and
15 voter suppression. I can recall there were calls, and
16 this is under the Clinton administration, there were
17 calls directly to the Justice Department reporting
18 unauthorized personnel blocking access to polling
19 places in some areas in Leon County in Florida.

20 Senator Barack Obama has introduced S.
21 1975, which is called the Deceptive Practices and
22 Voter Intimidation Prevention Act of 2005, which would
23 make it a crime punishable up to one year in prison
24 and a fine up to \$100,000 for knowingly deceiving a
25 person regarding the time, place, or manner of

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1 election in any federal election, or qualifications
2 for restrictions on voter eligibility for any federal
3 election with the intention to prevent such person
4 from exercising their right to vote.

5 I was home in Louisiana in 2002 to help my
6 Senator, Mary Landrieu in her reelection. That was my
7 last election, and I was driving down Canal Street and
8 an individual walked out. He was paid. I don't know
9 who he was paid by, and said, "Election day is
10 Tuesday."

11 Election day was that Saturday. It was a
12 runoff election. So people are paid, and I said, "Yo,
13 man, you can go to jail for passing out that
14 information," and when I told him he could go to jail,
15 he said, "I didn't know."

16 So the truth is that unfortunately these
17 schemes happen. I can tell you as somebody who has
18 managed and run campaigns all my life, all my life, I
19 have seen some of the craziest things happen on
20 election day, but I have told my staff if anybody, any
21 volunteer, any paid worker or unpaid worker is ever
22 caught suggesting that any American should vote on
23 another day other than that election day, they would
24 be fired instantly and be turned into the proper
25 authorities.

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1 So this happens unfortunately in our
2 country. I've seen it up close and personal, and we
3 should outlaw it, and we should make it a national
4 crime for people to knowingly stop and prohibit people
5 from voting.

6 MR. FUND: I can support that sa well, but
7 let me just make one point about the 2000 Florida
8 election. Yes, there were reports of police cars in
9 one instance setting up a road block to try to catch
10 someone, and that was close to a polling place. There
11 were reports of other people being blocked from
12 voting. There were reports made to the Justice
13 Department. I agree.

14 But there were ten weeks in which Attorney
15 General Janet Reno and the Clinton administration
16 investigated those allegations. Please bring me the
17 report. Please bring me the report which found any
18 substantial substance to those allegations. Bring me
19 the Justice Department report.

20 It does not not exist.

21 MS. BRAZILE: This own Commission
22 investigated and went into Florida back in 2000,
23 following that election and heard directly from some
24 of those individuals.

25 MR. FUND: The Justice Department has far

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1 more resources --

2 CHAIRMAN REYNOLDS: Okay, okay.

3 MS. BRAZILE: I just want to note that
4 this Commission did its job.

5 CHAIRMAN REYNOLDS: Okay. Mr. Hearne and
6 then Commissioner Kirsanow.

7 MR. HEARNE: I will briefly say Donna and
8 I share a concern over this point. The concern about
9 voter fraud and intimidation is a very real concern.
10 It does unfortunately happen. It's an ugly practice,
11 and it needs to stop.

12 Missouri passed, picking up on the Carter-
13 Baker recommendation, Missouri adopted a statute to
14 increase the felony for any effort just as you
15 proposed, Donna, in our Missouri Voter Protection Act
16 exactly as was recommended in Carter Baker that would
17 say it is an additional very serious felony, the top
18 category of felony for somebody to intentionally
19 misdirect somebody in the polling place or otherwise
20 to try to interfere with somebody exercising their
21 right to vote.

22 It is wrong in this country, in the United
23 States of America that any person anywhere, any state,
24 any city wakes up on election day and tries to
25 exercise their constitutional right to vote and faces

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1 some impediment in doing that or somebody who has a
2 scheme to try to prevent them. That is to be deplored
3 and seriously prosecuted, and I absolutely think
4 there's unanimity about our concern over that.

5 Again, you know, there's some good
6 proposals to do that. The organization I represent,
7 the American Center for Voting Rights, did a study of
8 the '04 election and found some instances of voter
9 intimidation. Those were reported.

10 It doesn't matter by who those activities
11 are engaged in. It shouldn't happen at all by anybody
12 ever.

13 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

14 COMMISSIONER KIRSANOW: Thank you.

15 The Civil Rights Commission did go down to
16 Florida after the 2000 election after there were
17 scores of reports about voter intimidation and fraud,
18 and the Commission heard considerable testimony and
19 was able to glean two instances in which there may
20 have been some blockage of voting.

21 One was the empty State Trooper car that
22 was across the street from a polling place. That was
23 the extent of it.

24 The other one was the traffic check point
25 two miles away and not even on the same road as

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1 another polling place, which check point actually
2 stopped -- the allegation was that there were a
3 certain number of people who were stopped, and the
4 people who were stopped were people with broken tail
5 lights and the usual check points.

6 So the Commission did go down there and
7 despite all of the allegations, that's the extent of
8 what we were able to find and the Justice Department
9 wasn't able to find anything else.

10 That's not to say there wasn't anything,
11 but we have to look at the empirical evidence, but my
12 concern goes more to Mr. Fund raised the issue of
13 absentee ballots. We have been concerned about a
14 photo ID and what kind of safeguard does photo ID
15 present if we have absentee ballots and there's
16 proliferation of that.

17 The Miami election of 1998, the mayoral
18 election was set aside because of irregularities with
19 respect to absentee ballots, and just as an aside, in
20 Florida, again, race decided for President by 579
21 votes, and the Miami Herald was able to discern 2,000
22 people voting illegally. That changes the election or
23 could have the potential for changing the election.

24 With respect to the absentee ballots,
25 does Mexico have biometrics that they attach to their

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1 ballots or the registration lists?

2 And if so, has there been any
3 consideration given or assessment done either by the
4 Carter-Baker Commission or elsewhere as to what the
5 cost of any kind of biometric protection either at the
6 polling place or by absentee ballot. It seems to me
7 that they would also encourage -- Ms. Brazile, you
8 were talking about multiple forms of identification
9 having to be produced. Sometimes poll workers aren't
10 aware of the fact that provisional ballots may obviate
11 that need, but if you've got one uniform standard that
12 is immutable, that no one can effectively even
13 challenge you, that that might be a means by which you
14 can insure both integrity and also access.

15 But I'm concerned about has there been a
16 cost assessment associated with that.

17 DR. PASTOR: First off, with regard to
18 Mexico, and Mr. Yaki is absolutely right, Mexico -- I
19 started observing Mexican elections in 1986 and
20 learned everything I needed to know about electoral
21 fraud.

22 (Laughter.)

23 DR. PASTOR: The Mexicans had perfected
24 dozens -- in fact, they had more words for electoral
25 fraud than Eskimos have for snow.

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1 Because of that, however, they leaped over
2 a 20-year period to a system that is significantly
3 more advanced than ours, frankly, right now. They do
4 have biometric identification cards, which were
5 introduced and which 99 percent of the voting
6 population have them.

7 They have, as I said, not only biometric
8 voter cards, which they actually use for everything
9 now because they're so fraud proof, but they also have
10 photos in the registration list of each of the people,
11 too.

12 They have not historically had a problem
13 with absentee ballots until this last election where,
14 for the first time, they allowed people in the United
15 States and abroad to vote, but only a very small
16 percentage did, but they still needed their voter
17 card, and also they had some special sites for voting
18 as well.

19 With regard to the United States, 40
20 million Americans now need biometric cards for
21 security related reasons, and I think that number will
22 increase over time as well. We did look into the cost
23 of it, and it's very expensive. There's no question.

24 We looked into a national identification
25 card system and estimated that it would cost \$11

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1 billion to do, but if you link that to a census, which
2 of course is coming up for the year 2010, that costs
3 about \$8 billion. You connect the two and you can do
4 it at significantly reduced costs as a result of it,
5 but it would be expensive to do that.

6 COMMISSIONER KIRSANOW: How does that work
7 in the absentee ballot context? Is there a biometric
8 signature affixed to the ballot itself which is then
9 checked against the voter registration roll?

10 DR. PASTOR: Yes. Most states now when
11 you do register, you register with a signature that
12 can be digitalized, and therefore, when the absentee
13 ballot comes in and there's a signature on that, you
14 can -- at the county level most states do have a
15 machine that can assess that that's the same signature
16 as the original one on your registration.

17 COMMISSIONER KIRSANOW: Have you
18 considered any libertarian objections to having some
19 kind of procedure such as that? It's not a
20 fingerprint, but nonetheless, it's something that is
21 specific to the person.

22 And also, Mr. Fund had mentioned the
23 conspiratorial nature of new technologies as applied
24 to voting. You can just imagine the conspiracies that
25 may arise when people think that their signatures are

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1 somehow digitalized and might be broadcast to users
2 that shouldn't have them.

3 DR. PASTOR: Well, we recommend a series
4 of procedural and institutional safeguards that go
5 back to the basic privacy laws that have had to deal
6 with that, you know, for regular commerce as well, but
7 there is that risk. There's no question about it.
8 The issue for public policy is how do you minimize
9 that risk and how do you introduce safeguards and
10 prohibitions on abuse.

11 MR. FUND: I am very concerned about
12 absentee ballots and their spread. At current trends,
13 we're going to have a nation half of which votes on
14 election day and half of which votes outside election
15 day. I question whether that's what the Founding
16 Fathers or even what the rest of us would want.

17 In addition, and I repeat this from my
18 original testimony, if you want to talk about voter
19 intimidation, have somebody have an absentee ballot.
20 They are subject to intimidation from all kinds of
21 people around them, their spouse, their relatives, the
22 local political boss, their employer, their local
23 union official.

24 There were documented cases in
25 Philadelphia during a very close state senate election

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1 in the 1990s in which poll workers went door to door,
2 political poll workers went door to door in Hispanic
3 neighborhoods saying (speaking Spanish), "This is the
4 new way to vote." They would hand them an absentee
5 ballot, and the person would have to mark it in front
6 of them, and the implication was that various
7 political blandishments and various political favors
8 that were traditionally given out in that neighborhood
9 were not going to be dispensed unless the absentee
10 ballot was filled out there right on the spot in front
11 of a political worker.

12 COMMISSIONER KIRSANOW: Similar
13 allegations were made in Florida, too, with respect to
14 that type of intimidation. My day job, which I'm
15 moonlighting right now, is with the National Labor
16 Relations Board, where we try to avoid mail ballot
17 elections for some of the same reasons you mentioned.

18 And there is also the component of if
19 you've got a mail ballot that is sent in a month
20 before the traditional election day, there's a kind of
21 overarching Madisonian concern about, well, the person
22 hasn't been fully informed about the debate between
23 two candidates or a couple of propositions before he
24 has even cast a ballot. It's a prejudicial vote, in
25 a sense. He's simply making that determination

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1 without being fully informed.

2 And aside from the cost, I have one kind
3 of macro question, and that is we have been talking in
4 somewhat of an informational vacuum here about
5 possibly voter intimidation, fraud, suppression, but
6 is there a baseline by which we can measure whether or
7 not those things are either increasing or decreasing?

8 I know it seems that all of these
9 concerns seem to be much more heightened since the
10 2000 election was so close, but if we take that as the
11 baseline, do you sense that these concerns are
12 increasing? Are they decreasing? Are we on the way
13 to solving some of these things?

14 MS. BRAZILE: I see it as increasing over
15 the past few years. Look. I've been trying to rally
16 Democrats since at least in the mid-1980s to look at
17 patterns of voter intimidation. As many people of
18 color and others began to register in large numbers,
19 I found problems. Some problems existed because
20 individuals after being registered, they were told
21 they were no longer eligible. Some of it has to do
22 with felony, disenfranchisement, which, you know,
23 unfortunately disproportionately impact minorities and
24 poor people.

25 Some of it has to do with the fact that

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1 when they register to vote, they didn't fill out the
2 form completely, and when they went to actually vote,
3 they were told that they could not.

4 So I see some of the problems increasing.
5 Clearly, in 2004 with some of the voter intimidation,
6 suppression problems that occurred even weeks before
7 election day, I tried to at the time in 2004 work with
8 Ed Gillespie, work with the Republican party so that
9 we can as party operatives have polling monitors at
10 the polling places in a nonpartisan way, knowing that
11 we were both deploying thousands and thousands of
12 lawyers on election day.

13 So I think the best and the most effective
14 way to deal with these problems and what we're doing
15 at the Democratic National Committee -- I'm sure the
16 Republicans are doing something similar -- is that
17 we're trying to educate people far in advance of
18 election day to, one, check their status, to see, to
19 make sure that they're on the voter registration
20 rolls.

21 Secondly, if they're experiencing any
22 problems, to call that 1-800 number so that we can try
23 to rectify the problem before election day. On
24 election day itself the majority of the calls that we
25 get to our 1-800 numbers are people who are lost.

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1 Their polling place has changed. They don't know
2 where to go and vote. No one told them they could
3 cast a provisional ballot.

4 And then, of course, we have had instances
5 where they've arrived and there are no ballots or the
6 machines have malfunctioned or there are some other
7 problems.

8 So we try to document all of this. We try
9 to turn it into the proper authorities in real time,
10 and then we try to find ways to educate the general
11 population in the future.

12 MR. HEARNE: I would agree real briefly
13 and note that as we've seen, and, Chairman, you've
14 noted that we've seen increasingly elections decided
15 by very narrow margins, and with that you see
16 particularly in those battleground states increasing
17 efforts of some to game the system one way or another.

18 Donna made a point, and I think it's one
19 that I certainly share, and that is there is a role
20 for both political parties to exercise responsibility
21 by working to educate their supporters to work
22 together. I know Ed Gillespie in the last election
23 called on Terry McAuliffe to jointly pull out some
24 teams to try to resolve the problems.

25 These issues, I think, as Donna has

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1 identified transcend partisanship because we need at
2 the end of the day, whether it's a Republican or
3 Democrat who won the election, all of the citizens
4 need to be confident that they, the citizens, the
5 voters were the ones who made that decision, not
6 somebody gaming the system.

7 So that really does transcend partisan
8 interests in my view.

9 DR. PASTOR: I'm not sure that fraud and
10 intimidation are increasing, but I am sure that the
11 perception is that they are, and that's as significant
12 in the electoral process as the reality, which we're
13 going to always have difficulty ascertaining.

14 The good news, however, is that that's
15 because people are paying more attention and that
16 they're watching things much more closely in the
17 electoral process since 2000 than they ever have
18 before and that's a positive things because that's
19 compelling this Commission and all of us to work on
20 the full range of problems that we face and hopefully
21 modernize our system because I think the problem with
22 the United States is we were complacent for far too
23 long with our electoral system. We didn't pay
24 attention.

25 The fact people are paying attention now

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1 is a good thing, provided it's a motive for us
2 modernizing the system.

3 CHAIRMAN REYNOLDS: Commissioner Yaki.

4 COMMISSIONER YAKI: Well, actually my
5 question was for Mr. Fund as soon as he gets back. So
6 I'll pass for the time being.

7 CHAIRMAN REYNOLDS: Okay.

8 COMMISSIONER KIRSANOW: Yes, I was hoping
9 Mr. Fund would be here also, but the three remaining
10 panelists could address this.

11 We've had HAVA in place for a few years
12 now. We've got the Electoral Assistance Commission.
13 We've got the example that we wish to avoid of 2000
14 and in 2004 and the concerns about that, Washington
15 State, a lot of things where there have been
16 litigations surrounding elections.

17 We're about a month away from the midterms
18 of 2006. In your opinion -- and I know this is
19 something difficult of definite ascertainment -- in
20 your opinion are we better prepared right now for
21 having a cleaning election than we were in the past or
22 do we face some significant problems in the 2006
23 election?

24 MR. HEARNE: I will venture a quick
25 prophecy here, and that is that 2006, in answer to

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1 your question, has some tools in place with HAVA,
2 single statewide voter rule, some improved processes,
3 some new technology. It all should help us to have
4 more comfort in our election process.

5 That said, '06, this midterm election will
6 be the first year in which an immense new system of
7 conducting elections is implemented, whether it's a
8 statewide role or new technology as mentioned. That
9 raises, just the novelty of the way we're running the
10 election in '06 compared to all of these prior years,
11 that raises the greatest likelihood of real problems
12 in the voter rolls particularly, as well as the
13 machines, as people saw in Maryland.

14 That would be the concern I think we have
15 this year. It isn't that we're not moving in the
16 right direction, but this is our transition year for
17 HAVA in many ways, and that raises some real concerns.

18 DR. PASTOR: We're not prepared for
19 November 2006, and there will be major problems.
20 Hopefully people will not just vote on the close
21 races, which is what we tend to do. If the election
22 is not close, people just walk away and don't ask the
23 hard questions about whether the system is working.

24 There are, as Thor pointed out, a few
25 areas where we are a little bit better off. You've

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1 got a provisional ballot that you didn't have before,
2 for example, but there are a lot of other areas that
3 were a lot worse off because of the expansion of
4 electronic machines and the lack of paper verifiable
5 audit trails, the lack of adequate training, the
6 confusion over the sets of rules, and more
7 importantly, the fact that we are paying more
8 attention.

9 We will find a lot more things wrong than
10 we had found in the past, not necessarily because
11 there are more things wrong, but we're watching for
12 them now.

13 MS. BRAZILE: As I mentioned earlier in my
14 testimony, there's a citizen led campaign to encourage
15 states and localities to have emergency paper ballots
16 on hand for many of these jurisdictions that will be
17 using these new voting systems for the first time this
18 fall. That is one of my major concerns, these new
19 voting systems.

20 We saw it in Maryland. The Washington
21 Post reported the machines had to be rebooted. Many
22 of the access cards didn't show up on time. That
23 created problems. Some of the machines failed to
24 communicate properly with other units.

25 In Massachusetts just recently in their

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1 primary, the scanners did not work.

2 In Ohio there was a report out by the
3 Cuyahoga County Commission that their electronic
4 scanners were useless and delayed results for several
5 hours and almost a week before they had all of the
6 reports there.

7 In Illinois, in March they had problems
8 with their new technology cards, the results to be
9 reported four weeks late.

10 El Paso, Texas, I can go on and on.

11 The problem with these new voting machines
12 that have problems that can be tampered with, we don't
13 know the source codes for many of them. This is a
14 problem that I think is going to cause a lot of
15 election anxiety this coming November.

16 But by and large, I think the Democratic
17 party, I know, and I know many of the nonpartisan
18 groups out there are trying to educate people. The
19 National Association of Secretaries of State are
20 encouraging voters to check to make sure that they're
21 on the voter registration rolls before they show up.

22 And, again, we're calling on people to
23 exercise their right to vote and to request a
24 provisional ballot if they are told that their name is
25 not on the registration rolls.

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1 CHAIRMAN REYNOLDS: Okay. A quick
2 question. We haven't discussed this issue, at least
3 not in depth, but the issue of felons regaining their
4 rights to vote. Would any of the panelists like to
5 discuss that issue?

6 MS. BRAZILE: Well, there's no question
7 that there's a disproportionate number. I'm a
8 southerner, and there was recently a case in Alabama,
9 I believe, where this issue of American citizens who
10 have paid their dues to society, paid their debts back
11 are still disenfranchised. Over a third of African
12 American men in the deep South are ineligible to vote
13 because they lost their voting rights when they had a
14 felony or misdemeanor conviction.

15 I think it's time to reenfranchise these
16 Americans. Again, the Brennan Center for Justice, I
17 like their reports because they're nonpartisan. It
18 doesn't put all of my partisan spin on it, but there's
19 an estimated 5.3 million Americans who are barred from
20 voting because of felony conviction. A
21 disproportionate number of African American and Latino
22 communities are impacted by this, and it's time that
23 we find ways to reenfranchise these citizens.

24 I know some States like Iowa and Virginia,
25 they're finding ways to have these citizens reapply

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1 for their citizenship so that they can once again have
2 a voice in the electoral process.

3 But this is a problem and we should find
4 ways to address it.

5 CHAIRMAN REYNOLDS: Professor Pastor, any
6 comments?

7 DR. PASTOR: Yes. The Carter-Baker
8 Commission also came out clearly in favor of
9 restoration of voting rights for eligible citizens who
10 have been convicted of a felony, though it also
11 singled out the felony would not include a capital
12 crime or one which requires enrollment with an
13 offender registry for sex crimes once they've served
14 their full sentence, including any terms of probation
15 or parol.

16 So, in short, we do believe that
17 restoration of voting rights for people who committed
18 felonies, with the exception of these two elements.

19 CHAIRMAN REYNOLDS: So the report contains
20 two exceptions.

21 DR. PASTOR: That's right.

22 CHAIRMAN REYNOLDS: Would it be
23 permissible for states to entertain standards and
24 consider other types of felonies that would bar ex
25 offenders for either a longer period of time or

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1 permanently?

2 DR. PASTOR: Well, the statement that I
3 just mentioned represented a compromise among the
4 Commission members. That was sort of carefully
5 crafted and --

6 CHAIRMAN REYNOLDS: I can imagine the work
7 that went into that.

8 DR. PASTOR: -- and so I think I'll just
9 let -- if you're asking about the Commission's
10 recommendation on that, I'll just leave it with that,
11 if I could.

12 MS. BRAZILE: And I will submit for the
13 record the report from the Brennan Center that also
14 show that 80 percent of the American people favor
15 returning voting rights to citizens once they've
16 completed their sentences for felony convictions, and
17 the United States is the only democracy in the world
18 that disenfranchises people who have completed their
19 sentences.

20 So I would like to submit this for the
21 record, sir.

22 CHAIRMAN REYNOLDS: Sure, sure.
23 Commissioner Kirsanow.

24 COMMISSIONER KIRSANOW: There was some
25 illusion to the difficult -- not some. There was a

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1 lot of illusion to the difficulties surrounding new
2 techniques, new standards for voting, and that that
3 may prompt problems down the road in the future.

4 There are a number of studies that
5 indicate that many of the difficulties that we find in
6 balloting, for example, in Florida 2000, was a result
7 of first time voters being unfamiliar with the ballot,
8 and there was a recommendation, I think, made that the
9 parties, for example take it upon themselves to
10 educate voters.

11 But has there ever been any
12 recommendations? This seems to me to be Civics 101,
13 something we should be teaching in third, fourth,
14 fifth grade. If there's a new implementation of the
15 voting procedure, we should be teaching kids, hey,
16 look. We've got a new procedure. Here's how it
17 works, or people in high school who are about to
18 become voters.

19 Has that been recommended by the Carter-
20 Baker? Because I didn't read the whole report.

21 MR. HEARNE: There has been a few points
22 I would note. Speaking for myself, I think it is a
23 very good thing for people to take children to polling
24 places, to encourage them, to model voting behavior,
25 and for example, in Missouri we recently amended our

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1 state law to expressly allow parents to bring their
2 children to the polling place. That's a good thing.
3 Previously they were prohibited under some state laws.

4 So states can do some certain things. I
5 know the Carter-Baker Commission -- I can let Bob
6 address that -- there was certainly very much of a
7 desire that we provide education and sufficient
8 resources, particularly with new technology so that
9 everybody gets to use it, particularly those who are
10 technologically challenged, older people who are not
11 as familiar with technology need to know this year
12 these voting systems.

13 And I think that's incumbent on local
14 election officials to make sure they do. Where they
15 have the ability to go into community centers or
16 nursing homes and provide a demonstration of the
17 technology, and again, as you were mentioning,
18 particularly the new generation of individuals coming
19 along.

20 One final quick point I would note is in
21 the process, again, particularly with new technology,
22 particularly if you get into recounts, another factor
23 that I have certainly seen and you saw in Florida is
24 the need for a consistent standard for conducting the
25 election, not just running the election, but if you

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1 get into any disputed issues, recounts, things of that
2 nature, to have a system in place that does not create
3 opportunity, advertent or inadvertent, for election
4 officials to exercise arbitrary discretion.

5 COMMISSIONER KIRSANOW: Don't you think
6 that Bush-Gore decision almost mandates that? Maybe
7 in a way that may be somewhat difficult, but --

8 MR. HEARNE: I actually read it slightly
9 differently. I read Bush-Gore saying that under the
10 equal protection clause what we need to do is to make
11 sure a state unifies and standardizes their procedures
12 within the state.

13 So in my home State of Missouri, whether
14 I'm voting in St. Louis County or whether I'm voting
15 in Kansas City or Springfield, that those votes of
16 whomever are cast are going to be counted, processed
17 the same way, and if there's a recount, that the
18 process for reviewing them is the same.

19 And also that it's not open to just the
20 discretion of the election officials at that time.

21 One final point I can't let go by. Donna,
22 you mentioned the need for paper back-up ballots. I
23 fully support that. That is a very important
24 procedure, particularly this year as we get into that
25 technology, to have that kind of fail safe voting in

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1 place so we don't disenfranchise any voter.

2 DR. PASTOR: There are studies that people
3 are intimidated from voting by electronic machines and
4 by the complexity of the process. They are just
5 almost afraid to come to vote because they don't want
6 to be embarrassed.

7 And in our electoral system where the
8 rules are so different from county to county and from
9 state to state, we don't have the opportunity that a
10 lot of countries have where they spend a lot of money
11 to show everybody exactly how to vote, you know, what
12 the process is like. And they do it on television for
13 20 or 30 minutes.

14 We don't have that luxury when there are
15 so many different machines and so many different
16 standards within counties and whatever else. So to a
17 certain extent if they could have just statewide
18 uniformity and much more civic education on television
19 because that's where people are going to get it, not
20 in the voter guide because a lot of poor people don't
21 read the voter guides.

22 I think that's absolutely critical to the
23 process. Civic education is key. The Help America
24 Vote Act was the first time that the federal
25 government gave money for civic education to the

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1 states, and the states used it, and there are many
2 studies that suggest that it really did help voter
3 participation because people got a little bit more
4 comfortable in explaining how the process was going to
5 work.

6 MS. BRAZILE: You know, unfortunately, the
7 burden of election protection, voter education, voter
8 registration is placed on our candidates and our major
9 two-party system. We don't have often third party
10 organizations who are willing to go out there and
11 register voters, to educate them, and then to turn
12 them out to the polls. The system is now such that
13 it's so partisan out there, it's so highly charged
14 that many of these groups either opt out of
15 participating or it's left to some small minister in
16 a church who's still willing to go out there and do
17 what I call the Lord's work and encouraging people to
18 get out and vote.

19 So until we have a uniform system in
20 place, until we fully properly fund our election
21 personnel, until we fully encourage every citizen to
22 take part in our electoral process, we're going to
23 have problems at the polling place.

24 CHAIRMAN REYNOLDS: Okay. Commissioner
25 Yaki.

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1 COMMISSIONER YAKI: Thank you very much.

2 One brief statement and then I want to
3 just ask Mr. Fund a question, but we've talked a lot
4 about how this whole aura of electoral issues, whether
5 there are problems, whether it's intimidation, whether
6 it's, fraud, whether it's registration, whatever,
7 undermines confidence in our voting system, and I
8 guess part of me doesn't want you to answer because
9 I really need to ask Mr. Fund this last question, but
10 perhaps after that.

11 How much, as somebody who has been in
12 politics not as long as Ms. Brazile or as successful
13 as Ms. Brazile, but certainly as someone who has been
14 there and done campaign work at the national and state
15 levels, one of the things you find when you go out and
16 you talk to people is that the level of rhetoric, the
17 way that negative ads have taken over, the way that
18 campaigns are being waged has also had an impact on
19 really how people feel about the electoral system and
20 their willingness to participate in that process,
21 given that it's a question of just who is my least
22 worst choice.

23 That being said, to Mr. Fund, I just
24 wanted to finish on this one question that I had asked
25 the others regarding the idea of a national voter ID

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1 or ID card or real ID or house ID, whatever you want
2 to call it, and the fact that at least amongst the
3 three people before you, if it were to come to pass
4 and it's still not sure if it will, the fact that it
5 must be free and that the predicates to getting it
6 must be free in order to insure accessibility to it,
7 I just wonder if you agreed with that as well.

8 MR. FUND: I don't believe that you have
9 to have a system in which all 300 million Americans or
10 all 220 million who are eligible to vote don't have to
11 pay anything for an ID card. I would submit to you
12 that the actual ID card itself should be free. I
13 think if you have to provide some documentation and
14 you have the means to do so, I think a small, modest
15 charge would be possible.

16 If you wish to declare that you do not
17 have the resources, I think that would be a very
18 simple procedure of just signing a statement to that
19 effect, no questions asked.

20 So I would submit to you free to anyone
21 who feels if they need it to be free or wish it to be
22 free, but I don't believe Ted Turner, I don't believe
23 Bill Gates --

24 COMMISSIONER YAKI: No, I understand.

25 MR. FUND: -- I don't believe those

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1 people should necessarily be given a free birth
2 certificate.

3 COMMISSIONER YAKI: But at least a minimal
4 means test if someone says I can't give --

5 MR. FUND: Absolutely.

6 COMMISSIONER YAKI: -- 20 bucks to get my
7 birth certificate or 75 bucks to get my driver's
8 license. I just can't do it. You would say they
9 could get that.

10 MR. FUND: Yes, but I do think that the
11 actual problem has been exaggerated. The vast
12 majority of Americans have some form of photo ID
13 identification, and I think in the vast majority of
14 cases that can be converted into the ID that meets the
15 security requirements that we're going to have in the
16 next few years.

17 Obviously this has to be phased in.

18 COMMISSIONER YAKI: I guess my concern is
19 that the vast majority does include some of my
20 majority, or non-majority.

21 MR. FUND: I think provisions have to be
22 made for them, and remember over 100 nations, as
23 Professor Pastor has pointed out, have encountered
24 this problem. Over 100 nations, and I can assure you
25 the vast majority of them have lower per capita

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1 incomes than we do. They somehow have found a way to
2 do that.

3 I believe best practices are here.
4 Professor Pastor is a noted expert on this, and I
5 think that he and his colleagues in academia have
6 probably gone out and done studies or can do studies
7 on how to square having a population that can't afford
8 these documents and yet 100 nations have been able to
9 establish systems that give the people those
10 documents.

11 COMMISSIONER YAKI: And I would just kind
12 of go back to the point I made before my question to
13 you, which is that we can talk about how 579 votes,
14 2,000 votes were found to be whatever. We don't know
15 how many non-votes were not cast because of
16 intimidation. We don't know how many votes were
17 turned away because of whatever. We don't know how
18 many votes weren't cast because people just have no
19 faith in the system entirely.

20 From the candidates, to the parties, to
21 whatever and how we overcome that I think is the
22 greater barrier to full participation, not just
23 whether or not we catch Harry Houdini voting three
24 times in Michigan or someone blocking a roadway and
25 saying, "Sorry. The election was yesterday. It's all

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1 canceled."

2 Beyond that, the bigger problem is how do
3 we get Americans to believe that this is something
4 really worth investing in. I mean I hate to say this.
5 I'm someone who just became a permanent absentee voter
6 because I couldn't stand going to my polls anymore and
7 waiting and watching these folks who admittedly are
8 good, patriotic Americans, but just bumbling up the
9 process with machines and the lines were just getting
10 incredible.

11 Now, on the other hand, if we were in a
12 situation, as they did in the first election in South
13 Africa, where people were waiting eight hours in the
14 hot sun to vote and they had 99 percent turnout, I'll
15 take that.

16 MR. FUND: Sure.

17 COMMISSIONER YAKI: I'll take that.

18 MR. FUND: Well, I want to echo the
19 comments in your statement because we do have a
20 problem. We rank 139th out of 163 democracies in the
21 rate of voter participation. If we continue to see
22 voter participation decline, we're going to have
23 voting left to the zealous or the self-interested few,
24 and the more we have those people vote and other
25 people of goodwill not vote, the more we're going to

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1 see harshly personal campaigns that dispense with any
2 positive vision of our national future.

3 And some people would say the current
4 election resembles that.

5 MS. BRAZILE: I agree on that one. Less
6 than 12 percent of Americans participated this past
7 year in the primary election, and we all know based on
8 previous elections that the average turnout in off-
9 season election mid-term is 37, 38 percent.

10 So this is a real problem. You know, many
11 Americans feel overwhelmed as it is, and when they
12 hear of these new barriers, these new restrictions,
13 these new regulations, it intimidates certain people,
14 and we need to be cognizant of that when we put
15 forward new ideas to improve our democracy.

16 MR. FUND: I want to echo what my friend
17 Donna said, and that's this. Let's look at what the
18 customers are telling us, first time voters when you
19 turn 18. Only 11 percent of 18 and 19 year olds vote
20 in their first election. They're telling us
21 something. They're telling us that the process isn't
22 meaningful to them or that they no longer feel as if
23 it has anything to do with their daily lives or that
24 they've lost confidence in it because they're just
25 awash in cynicism.

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1 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

2 COMMISSIONER KIRSANOW: This is a
3 relatively narrow question. A couple of months ago we
4 just reauthorized temporary provisions of probably the
5 most successful piece of civil rights legislation that
6 we've seen, the Voting Rights Act. Commissioner
7 Melendez referred briefly to one of the provision,
8 Section 203. That one is primarily -- not primarily,
9 but in large part -- dealing with bilingual ballots
10 for Native Americans. But there's also the
11 correlative 211 which deals with bilingual ballots
12 that's based on a certain calculation of the
13 percentage of perceived bilingual speakers in a
14 particular jurisdiction.

15 Has anyone done an assessment as to
16 whether or not -- let me back up. During the
17 testimony before the Senate Judiciary Committee prior
18 to reauthorization of temporary provisions of the
19 Voting Rights Act, there was some concern about the
20 complexity of certain ballot propositions, and when
21 you translate them you don't necessarily get an exact
22 translation from English to, say, Tagalog or English
23 to some other language.

24 Has there ever been an assessment done as
25 to whether or not that presents a vehicle for either

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1 error or fraud that is the bilingual ballot and
2 anything that may be lost in translation?

3 DR. PASTOR: I'm not aware of such a
4 study.

5 PARTICIPANT: Good question.

6 DR. PASTOR: And I think it's a very good
7 question. I think translating those referendums from
8 legalese into English is a far more difficult problem
9 I find, but I don't know the answer to your question.
10 So I don't know whether they've really looked at that
11 closely.

12 As you know, some of the referendum are
13 very convoluted in English.

14 COMMISSIONER KIRSANOW: I have to read
15 them three, four times, actually, the Constitutional
16 amendments.

17 DR. PASTOR: So to be able to assure that
18 they are translated properly if we can't understand
19 them, well, is still a large problem.

20 COMMISSIONER KIRSANOW: I know in one case
21 in New York, for example. This wasn't about
22 composition. It had to do with two candidates for a
23 particular office, and I can't recall which language
24 the translation was made into. It may have been into
25 Chinese, but I'm not sure, but they transposed the

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1 party affiliations from Republican to Democrat and
2 vice versa.

3 You can imagine in New York City the poor
4 Democrat who then became a Republican. You know, he
5 may not be very happy about that.

6 CHAIRMAN REYNOLDS: Commissioner Yaki.

7 COMMISSIONER YAKI: I just wanted to put
8 a little humorous story on that from the great multi-
9 lingual City of San Francisco that I used to represent
10 with such great joy, but one of the interesting things
11 had to do with how you took someone's name and put it
12 in Chinese characters.

13 And I actually came up with the basic
14 policy that it would essentially be phonetic because
15 Chinese characters all have their own particular
16 pronunciations. And the reason we did that is because
17 a couple of people decided to take great liberties
18 with their names and create whole new Chinese names
19 for themselves. Some of them were resembling ancient
20 Chinese leaders of old history that people would
21 recognize and go, "Oh, this must be the relative of,"
22 you know, whoever it was.

23 So we had to put a stop tot hat because
24 people were taking great creativities that they can
25 only do in San Francisco.

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1 CHAIRMAN REYNOLDS: Okay. On that note,
2 I would like to conclude.

3 DR. PASTOR: I'm sorry. May I just
4 correct one thing? At several points in time I
5 referred to these estimates on the real ID law of
6 being as much as \$11 billion, and I said that it was
7 a report by the National Association of Secretaries of
8 State.

9 That's incorrect. I just found it. It
10 was from the National Governors Association, the
11 National Conference of State Legislatures. So I'd
12 just like to correct that part of the record.

13 CHAIRMAN REYNOLDS: Thank you.

14 Well, I would like to thank all of the
15 panelists for their excellent presentations. I think
16 that his has been quite enlightening, and with this
17 era of close elections, this conversation is sorely
18 needed, and with any luck we can continue this process
19 that we've started to improve the efficiency of our
20 national and state and local elections.

21 Thank you.

22 (Whereupon, at 3:29 p.m., the meeting and
23 briefing were concluded.)

24
25

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represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
typewriting.


Eric Hendrixson