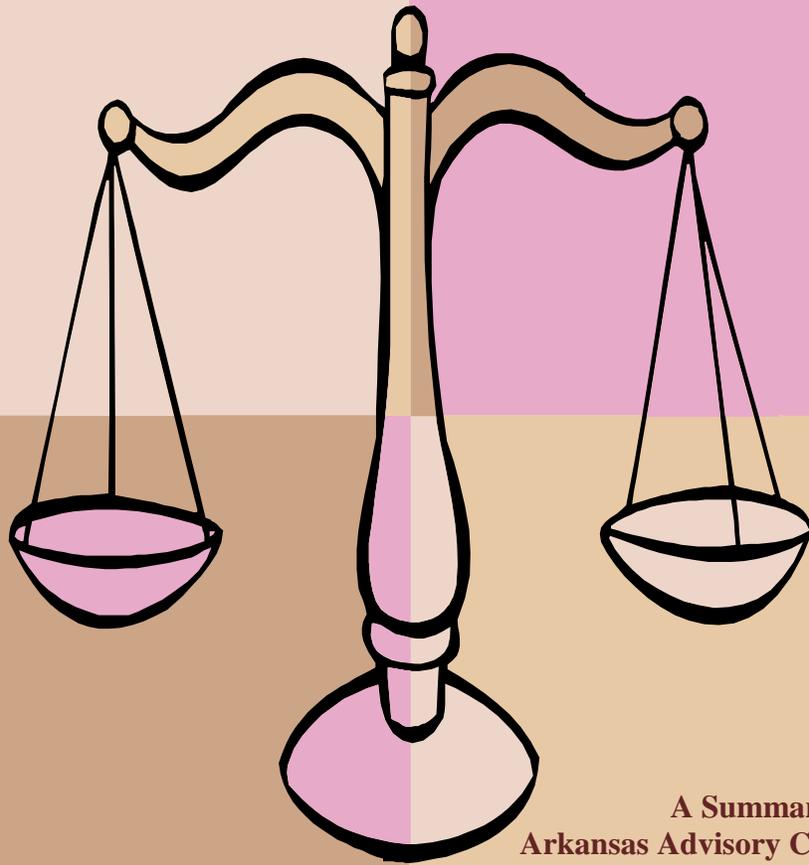


Guarding Civil Rights in Arkansas: The Need for a State Civil Rights Agency



**A Summary Report of the
Arkansas Advisory Committee to the
U.S. Commission on Civil Rights**

January 2015

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State Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice; they advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission as requested; and they observe any open hearing or conference conducted by the Commission in their states.

LETTER OF TRANSMITTAL

Arkansas Advisory Committee to the U.S. Commission on Civil Rights

The Arkansas Advisory Committee to the U.S. Commission on Civil Rights submits this report as part of its responsibility to study and report on civil rights issues in Arkansas. This report, *Guarding Civil Rights in Arkansas: The Need for a State Civil Rights Agency*, provides an update to a previous committee study of the issue in 2001. This report was adopted by a vote of 13 yes, and 0 no.

In previously reporting on the issue, the Arkansas Advisory Committee recommended that the state legislature of Arkansas amend the Arkansas Civil Rights Act of 1993 to establish a state civil rights agency. That recommendation was addressed in part when the Arkansas Legislature acted in 2001 to establish the Arkansas Fair Housing Commission.

In 2012 and 2013 the Arkansas Advisory Committee did follow-up work on the issue of civil rights enforcement in the state. As part of that activity, the committee held a fact-finding meeting on September 12 and 13, 2012, in Little Rock, Arkansas and received information from legal experts, government officials, and persons from academia, civil rights organizations, community-based groups, and members of the public.

The Arkansas Advisory Committee finds that although the Arkansas legislature took action to establish the Arkansas Fair Housing Commission to address equal opportunity in housing, there remains a need for a state-based agency to investigate and mediate civil rights complaints regarding employment and public accommodation.

Gary McHenry

Chairman

Arkansas Advisory Committee

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NOTE: Gregory Kaza was a member of the Arkansas Advisory Committee at the time of the fact-finding meeting in September 2012.

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FOREWORD

Over the past two decades the Arkansas Advisory Committee to the U.S. Commission on Civil Rights (Commission) has worked to try and strengthen state and local civil rights enforcement. During these efforts one concern of the Arkansas Advisory Committee has been whether citizens and residents of the state have adequate means for redressing complaints of discrimination in employment, housing, and public accommodations.

Some of this effort stemmed from an initial interest by the Arkansas Committee to assess the progress and effectiveness of state and local civil rights agencies based upon a new relationship between the federal government and state governments in the enforcement of civil rights. Until around 1980 the federal government directly administered much of the primary civil rights enforcement efforts of the nation. During the 1980s a “new federalism” concept emerged in the enforcement of civil rights. Under this concept the federal government committed itself to increase funding for state and local civil rights agencies to enforce civil rights laws. In turn, much of the complaint processing and investigation work devolved to local and state agencies.

While 46 states and the District of Columbia have in place state agencies that investigate and litigate complaints for all areas of discrimination under state laws to include employment, public accommodation and housing, in Arkansas the state level agency investigates only housing complaints. Other complaints of discrimination that allege a violation of federal law must be filed with a federal agency. For example, employment complaints must be filed with the EEOC. While a state-level fair housing commission exists, members of the Arkansas Committee are concerned that the absence of a more expansive civil rights agency at the state level may preclude state citizens and residents from effective civil rights protections under the “new federalism” concept.

The first formal meeting by the Arkansas Committee to focus on this issue was held in Little Rock in September 1998. During that project, members of the Arkansas Committee conducted field interviews and obtained information from selected government agencies and civil rights organizations regarding the numbers and types of complaints they received and whether they believed a state agency was needed to enforce civil rights laws in Arkansas.

At the end of the process, the Arkansas Advisory Committee recommended that the state legislature amend The Arkansas Civil Rights Act of 1993 to make it substantially equivalent to federal laws and regulations and to establish a civil rights agency that is an arm of the state government allowing the state to address civil rights disputes and issues within the state of Arkansas. That recommendation was formally set out in 2001 in a report issued by the Committee.

A direct result of the committee's hearing in September 1998 and other related meetings with state officials and then Governor Mike Huckabee, the Arkansas Legislature passed Act 1785 in January 2001 to improve fair housing and fair lending enforcement within its borders. The law was amended over the next two years to allow Arkansas's fair housing and fair lending laws to obtain substantial equivalency with federal legislation and qualify to participate in U.S. Department of Housing and Urban Development's (HUD) fair housing assistance program.

However, the Legislature failed to address other outstanding civil rights issues such as employment and public accommodations. On September 12-13, 2012, in Little Rock, AR, the committee engaged in fact-finding activity. It received testimony from elected officials, government officials, members of the legal community, academics, leaders of community organizations, and members of the public regarding the establishment of a state civil rights commission.

This is a summary report of that public fact-finding. On the basis of the hearing, the committee made findings of fact and issued recommendations.

I. BACKGROUND

The Arkansas Civil Rights Act of 1993

In 2001 the Arkansas Committee released its report on the enforcement of civil rights in the state: *Who Is Enforcing Civil Rights in Arkansas: Is There a Need for a State Civil Rights Agency?*¹ In that report, the committee noted that the first efforts to develop state civil rights legislation began under Governor Bill Clinton in 1991, when he formed a task force to study the issue.² On April 8, 1993, subsequent Governor Jim Guy Tucker signed into law Arkansas' first civil rights legislation, the Arkansas Civil Rights Act of 1993.³ The Arkansas Civil Rights Act of 1993 states in part:

(a) The right of an otherwise qualified person to be free from discrimination because of race, religion, ancestry or national origin, gender, or the presence of any sensory, mental, or physical disability is recognized as and declared to be a civil right This right shall include, but not be limited to:

1. The right to obtain and hold employment without discrimination;
2. The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges or any place of public resort, accommodation, assemblage, or amusement;
3. The right to engage in property transactions without discrimination;
4. The right to engage in credit and other contractual transactions without discrimination; and
5. The right to vote and participate fully in the political process.

(b) Any person who is injured by an intentional act of discrimination in violation of subdivisions (a) (2)-(5) of this section shall have a civil action in a court of competent jurisdiction to enjoin further violations, to recover compensatory and punitive damages, and, in the discretion of the court, to recover the cost of litigation and reasonable attorneys' fees.⁴

¹ Arkansas Advisory Committee to the U.S. Commission on Civil Rights, *Who Is Enforcing Civil Rights in Arkansas: Is There a Need for a State Civil Rights Agency?* (February 2001), accessible from the Central Regional Office, U.S. Commission on Civil Rights, Kansas City, MO (hereafter referred to as *Who is Enforcing Civil Rights*).

² *Ibid*, p. 2.

³ ARK. CODE. ANN. § 16-123-101.

⁴ *Id.*

While the civil rights legislation finally brought Arkansas into the fold with other states' modern day civil rights laws, the law is not substantially equivalent to federal civil rights laws. That is, procedures, remedies, and judicial review of actions are not equivalent to those under federal guidelines. For example, the Arkansas Act does not conform to the age discrimination under EEOC's jurisdiction because it does not prohibit age discrimination. The act also exempts religious entities from the employment aspects of the law, and the section of the Arkansas law that defines "employee" does not conform to EEOC's standards.⁵

Most importantly, though, no state agency was originally established with statutory authority to enforce the state civil right law. That changed partially in 2001 with an amendment to the Arkansas Fair Housing Act (AFHA):

The opportunity to obtain housing and other real estate without discrimination because of religion, race, color, national origin, sex, disability, or familial status, as prohibited by this chapter, is recognized and declared to be a civil right⁶

⁵ *Who is Enforcing Civil Rights*, pp. 5-6.

⁶ The Arkansas Fair Housing Act of 1995 (codified at ARK. CODE. ANN. § 16-123-201). {Editor's note: should this be 1993?}

TABLE 1

State Civil Rights Enforcement Agencies

STATE	STATE CIVIL RIGHTS ENFORCEMENT AGENCY	STATUTE	KEY POINTS
Alabama	No state agency		Has not passed a state level civil rights/human rights act. Complaints may be filed through individual state agencies and departments in many categories (Labor, Education, Human Resources, and others)
Alaska	Alaska State Commission for Human Rights	AS 18.80	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Arizona	Arizona State Attorney General — Civil Rights Division	ARS 41-192(A)(7) , ARS 41-1402	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
	Arizona Civil Rights Advisory Board	ARS 41-1401	Conducts surveys, issues publications, fosters elimination of discrimination
Arkansas	Arkansas Fair Housing Commission	(AS 16-123-303, 304)	Investigates complaints ONLY related to fair housing discrimination; employment discrimination is handled through EEOC

STATE	STATE CIVIL RIGHTS ENFORCEMENT AGENCY	STATUTE	KEY POINTS
California	California Fair Employment and Housing Council	CA Code 12930-12933	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, housing, and other state statutes such as hate crimes
Colorado	Colorado Attorney General — Civil Rights Division	C.R.S. 24-34-402 C.R.S. 24-34-502 C.R.S. 24-34-602	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
	Colorado Civil Rights Commission	C.R.S. 24-34-301	Holds hearings; formulates policy; considers appeals on cases dismissed by Civil Rights Division
Connecticut	Connecticut Commission on Human Rights & Opportunities	Conn. Gen Stat. 46a-56.	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Delaware	Delaware Division of Human Relations — State Human Relations Commission	31 Del. C. 3001	Investigates complaints for discrimination in housing and public accommodation.
	Delaware Division of Industrial Affairs	19 Del. C. § 712(a)(2)	Investigates complaints for employment discrimination
District of Columbia	District of Columbia Office of Human Rights	D.C.C. § 2-1411.01	Enforces various D.C. Acts as well as EEOC, FHA, ADA, and ADE complaints.
	District of Columbia Commission on Human Rights	D.C. C § 2-1403.01	Adjudicates private sector complaints certified by Office of Human Rights

STATE	STATE CIVIL RIGHTS ENFORCEMENT AGENCY	STATUTE	KEY POINTS
Florida	Florida Commission on Human Relations	FL Statute 760.03 FL Statute 760.06	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Georgia	Georgia Commission on Equal Opportunity	O.C.G.A. § 45-19-24	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Hawaii	Hawaii Civil Rights Commission	HRS 368-2 HRS 368-3	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Idaho	Idaho Human Rights Commission	Idaho Code Title 67, Ch 59	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Illinois	Illinois Human Rights Commission	775 ILCS 5/Art 8	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Indiana	Indiana Civil Rights Commission	IC 22-9-1-4, -6	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing

STATE	STATE CIVIL RIGHTS ENFORCEMENT AGENCY	STATUTE	KEY POINTS
Iowa	Iowa Civil Rights Commission	IC 216.3, 216.5	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Kansas	Kansas Human Rights Commission	K.S.A. 44-1003, 44-1004	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Kentucky	Kentucky Commission on Human Rights	KRS 344.150, 344.180,	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Louisiana	Louisiana Commission on Human Rights	LSA-RS. 51:2233, 2235	Investigates complaints for employment, public accommodation, and banking practices
Maine	Maine Human Rights Commission	MRS 5-4561, 4566	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Maryland	Maryland Commission on Human Relations	A.C.M. 20-201, 20-207, Subtitle 10	“Powers” section only addresses racial discrimination with additional power of investigatory hearings, subpoenas through additional statutory protections
Massachusetts	Massachusetts Commission Against Discrimination	M.G.L. c. 151b.3	Investigates and litigates complaints for all areas of discrimination under

STATE	STATE CIVIL RIGHTS ENFORCEMENT AGENCY	STATUTE	KEY POINTS
			state laws to include employment, public accommodation, housing, and other state statutes such as veteran status
Michigan	Michigan Civil Rights Commission	Michigan State Constitution of 1963, Art V, Section 29.	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Minnesota	Minnesota Department of Human Rights	MS 363A.05, 06	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Mississippi	No state agency		Mississippi does not have a Civil Rights/Human Rights Act or generalized protection from the state level. All restrictions and departments quote only federal laws and complaint procedures.
Missouri	Missouri Commission on Human Rights	MRS 213.020 and 213.030	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Montana	Montana Human Rights Hearing Bureau	Dept of Labor 24.9	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing

STATE	STATE CIVIL RIGHTS ENFORCEMENT AGENCY	STATUTE	KEY POINTS
	Montana Commission for Human Rights	49 MCA 2-15-1706 Dept of Labor 24.9.101	Independent commission hears appeals from bureaus
Nebraska	Nebraska Equal Opportunity Commission	NRS 48-1116 NRS 48-1117	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Nevada	Nevada Equal Rights Commission	NRS 233.03 NRS 233.15	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
New Hampshire	New Hampshire Commission for Human Rights	NH RSA 354-A	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
New Jersey	New Jersey Attorney General — Division on Civil Rights	NJS 10:5-6 NJS 10:5-8	Powers are vested by statute with attorney general, with authority to delegate to Director of Division of Civil Rights investigation and litigation of complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
New Mexico	New Mexico Human Rights Commission; Department of Workforce Solutions	NMS 28-1-3	Investigates and litigates complaints for all areas of discrimination under

STATE	STATE CIVIL RIGHTS ENFORCEMENT AGENCY	STATUTE	KEY POINTS
		NMS 28-1-4	state laws to include employment, public accommodation, and housing
New York	New York State Division of Human Rights (NYC has its own City Commission on Human Rights also . . . both share concurrent jurisdiction within the city)	NY Law 15.293, 15.295	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
North Carolina	North Carolina Human Relations Commission	NC G.S. 143B-391 NC G.S. 41A-7	Primary charter is to enforce NC Fair Housing Act, but also to disseminate information on employment law; investigatory powers are outlined in Fair Housing Act, rather than in chartering statute
North Dakota	North Dakota Department of Labor — Human Rights Division	N.D.C.C. Chapter 14-02.4-22 (Human Rights) N.D.C.C. Chapter 14-02.5-13 (Housing)	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Ohio	Ohio Civil Rights Commission	O.R.C. 4112.03 O.R.C. 4112.04	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Oklahoma	Oklahoma Attorney General — Office of Civil Rights Enforcement	Senate Bill 763	Separate, independent Civil Rights Commission with enforcement authority expired in 2012; now merged into attorney general’s Office, after 49 years, with authority to delegate to Director of Division of Civil Rights

STATE	STATE CIVIL RIGHTS ENFORCEMENT AGENCY	STATUTE	KEY POINTS
			investigation and litigation of complaints for all areas of discrimination under state laws to include employment and housing
Oregon	Oregon Bureau of Labor and Industries — Civil Rights Division	ORS 659A.800 ORS 651.060	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Pennsylvania	Pennsylvania Human Relations Commission	16 PA Code 41	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Rhode Island	Rhode Island Commission for Human Rights	R.I. 28-5-8 R.I. 28-5-13	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
South Carolina	South Carolina Human Affairs Commission	SC 1-13-40 and -70	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
South Dakota	South Dakota Department of Labor — Division of Human Rights; Human Rights Commission	SD 20-13-2 SD 20-13-28	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing

STATE	STATE CIVIL RIGHTS ENFORCEMENT AGENCY	STATUTE	KEY POINTS
Tennessee	Tennessee Human Rights Commission	T.C.A. 4-21-201	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Texas	Texas Workforce Commission — Civil Rights Division; Commission on Human Rights	TX Labor Code 2A.21.0015	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Utah	Utah Anti-Discrimination and Labor Division	UT Labor Code 35A-5-104	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Vermont	Vermont Human Rights Commission	VTS 9-141-4551	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Virginia	Virginia Human Attorney General — Division of Human Rights	VA Stat 39.2.2-520	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Washington	Washington State Human Rights Commission	RCW 49.60.050 and .120	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing

STATE	STATE CIVIL RIGHTS ENFORCEMENT AGENCY	STATUTE	KEY POINTS
West Virginia	West Virginia Human Rights Commission	WV 5-11-5, -8	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Wisconsin	Wisconsin Department of Workforce Development — Equal Rights Division	WS 111.375 - 111.395	Investigates and litigates complaints for all areas of discrimination under state laws to include employment, public accommodation, and housing
Wyoming	Wyoming Fair Employment Program/Equal Employment Opportunity Commission	WS 27-9-102, 104	Investigates complaints ONLY related to employment discrimination or unfair employment practices; issues subpoenas; housing discrimination is handled through federal Fair Housing Act/HUD.

Source: Arkansas Advisory Committee to the U.S. Commission on Civil Rights.

In amending the 1993 civil rights act, the General Assembly recognized that the right to seek housing underlies the general public’s ability to secure health, safety and welfare, and so the legislature seeks with this act to protect the public’s access to fair housing. Importantly, under AFHA, a state fair housing commission was established — the Arkansas Fair Housing Commission. The fair housing commission is an enforcement agency that works in conjunction with the U.S. Department of Housing and Urban Development to enforce fair housing rules and regulations.

As such, the Arkansas Fair Housing Commission receives, investigates, conciliates and/or resolves complaints that allege violations of the Arkansas Fair Housing Act which prohibits discrimination on the basis of race, color, national origin, religion, sex, familial status (*including children under the age of 18 living with parents of legal custodians, pregnant women and people securing custody of children under the age of 18*) and disability. The commission also cooperates with and provides technical assistance to federal, state, local and other public or private entities that are formulating or operating programs to prevent or eliminate discriminatory housing

practices. It also has education and outreach program[s] to prevent discriminatory housing practices.⁷

Apart from housing complaints, though, the Arkansas Civil Rights Act only allows citizens to pursue other allegations of discrimination through administrative channels with the federal government. For example, if a person alleges discrimination in employment because of race, color, sex, religion, national origin, or disability, the person must file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC).

In most other states, the state civil rights commission is considered by EEOC to be a Fair Employment Practice Agency (FEPA). In practice, the EEOC and FEPA agencies maintain a work sharing agreement. When an individual files a charge with a FEPA, it is simultaneously filed with the EEOC. The general practice is for most complaint investigations to be conducted by the FEPA agency, with the EEOC on a contractual basis underwriting a portion of the administrative costs.

Arkansas Demographics and Neighboring State Commissions

When the Arkansas Committee first began its examination of this issue in the 1990s, the state was predominantly populated by two major racial/ethnic groups. In 1990, whites comprised about 83 percent of all state residents while African Americans comprised 16 percent. Other racial/ethnic groups such as American Indians, Asians, and Hispanics collectively accounted for only around one percent of the state's populations.⁸

⁷ State of Arkansas, Fair Housing Commission, at <http://www.fairhousing.arkansas.gov/index.php/about-us-2/mission-2> (last accessed Mar. 1, 2013).

⁸ *Who is Enforcing Civil Rights*, p. 2.

TABLE 2**Arkansas Population and Median Household Income**

	Number	Percent
Total Population	2,949,131	
White persons, not Hispanic, percent, 2011		74.2
African American persons, percent, 2011		15.6
Asian and Pacific Islander persons, percent, 2011		1.5
American Indian and Alaskan Native persons, percent, 2011		0.9
Persons reporting two or more races, percent, 2011		1.8
Persons of Hispanic or Latino origin, percent, 2011		6.6
Real Median Household Income, 2011	\$38,758	

Source: U.S. Census Bureau.

Note: Real median household income for the United States in 2011 was \$50,502.

As reported in the committee's 2001 report, during the 1990s Arkansas led the nation in Hispanic population growth. Hispanic immigrants, mostly from Mexico and Central America, moved into Arkansas and were primarily employed in the state's poultry and meat processing industries. Official census counts show that while there were only 19,878 Hispanics living in the state in 1990, by 1998 the population had more than doubled to 49,473. Researchers indicated this count as likely too low by as much as one-third, which placed the actual Hispanic population in the state at more than 60,000.⁹

The most recent census numbers show a continuing statewide trend to greater demographic diversity. Whites now comprise just 75 percent of the state's total population. African Americans continue to be the second largest racial/ethnic group in the state at around 15 percent of the

⁹ Ibid.

population. This is essentially the same percentage of the total population that they comprised 20 years earlier.¹⁰

The Latino population, however, has continued its sharp increase from the 1990s. The most recent census data shows a Latino population of around 195,000 persons.¹¹ In percentage terms, persons of Hispanic or Latino origin comprise 6.6 percent of the state's total population. In the past two decades, the state's Asian population has also tripled from 0.5 percent to 1.5 percent.¹² Clearly, with the sharp increase in the state's Hispanic and Asian populations, race and ethnic relations will have to address a larger milieu of ethnic and multicultural issues.

To provide perspective on state civil rights commissions in similar states, the nearby state of Kentucky has a population of 4,380,000 persons with non-Hispanic whites accounting for 86 percent of the state's population. Tennessee borders Arkansas to the east and has a population of 6,456,000 persons of whom 75 percent are non-Hispanic whites. To the south, Louisiana has a population of 4,601,000; non-Hispanic whites comprise 60 percent of the population.¹³

There is a state civil rights agency in Kentucky, the Kentucky Commission on Human Rights. The Kentucky enforcement law was passed in 1964, and under that statute the Commission covers employment, housing, and public accommodations along with responsibilities for Title VI—equal opportunity in government contracting. The Kentucky Commission has a strong research arm which releases reports every year on civil rights issues and trends in the state of Kentucky. The research arm in Kentucky was probably critical and the most important factor in Kentucky's law becoming a reality.¹⁴

The state civil rights agency in Tennessee is the Tennessee Human Rights Commission. That agency covers employment, housing, and public accommodations and, similar to Kentucky, is responsible for coordinating compliance with Title VI for all of the state agencies receiving federal financial assistance. Both Tennessee and Kentucky have amended their enforcement powers over the years. In 1987 Tennessee amended its act to include housing. In 1988 Kentucky amended its housing statute, which existed from 1972, to be consistent with the U.S. Department of Housing and Urban Development law, by adding familiar status and disability to it.¹⁵

The Tennessee Human Rights Commission bears responsibility for a geographic area and population roughly twice that of Arkansas. It receives about 13,000 complaints on an annual basis. After preliminary screening, on average 900 complaints have some semblance of a *prima*

¹⁰ Table 2.

¹¹ Arkansas State Advisory Committee from Table 2 data.

¹² Table 2.

¹³ U.S. Census.

¹⁴ Beverly Watts, testimony before the Arkansas Advisory Committee to the U.S. Commission on Civil Rights, hearing, Little Rock, AR, Sept. 12-13, 2012 (hereafter cited as Little Rock Hearing transcript), p. 58.

¹⁵ *Ibid.* p. 59.

facia case, meaning the allegation of discrimination has a basis in the state statute.¹⁶ On the basis of that experience a state civil rights commission in Arkansas would likely average 450 complaints per year.

To the south of Arkansas, the state civil rights agency in Louisiana is embedded within the attorney general's office. That agency has a seven member board of commissioners and a staff of **four full time persons**, which consists of an executive director, an executive assistant investigator, an administrative assistant, an intake officer and an investigator. The office also employs contract investigators. In addition the agency uses the services of student interns and receives legal service assistance from the attorney general's office. It is budgeted at approximately \$500,000 but this is augmented with a \$100,000 contract with the EEOC.¹⁷

The Committee's 2001 Study of Civil Rights Enforcement

In releasing its 2001 study of civil rights enforcement, the Arkansas Committee noted that Arkansas is just one of a few states that have not established a state statutory civil rights agency with authority to enforce state civil rights laws. Moreover, the committee's review of the Arkansas Civil Rights Act of 1993 found the act is not substantially equivalent with federal laws, rules, and regulations in the areas of prohibited age and disability discrimination in employment; and age, religion, and familial status discrimination in housing.¹⁸

Compounding the concerns of the committee with the act, the legislation fails to provide for an administrative enforcement body to receive and process complaints in accordance with U.S. Department of Housing and Urban Development (HUD) procedures which require remedies and judicial review of agency actions. As a result, in the absence of a substantially equivalent state law, complainants must file with the EEOC for employment discrimination and with HUD for housing discrimination.¹⁹

The Arkansas Committee also questioned the effectiveness of the act as an enforcement mechanism insofar as subsequent to its passage there has not been a significant amount of litigation. Although representatives of the business community said there was a sizable group of skilled and aggressive civil rights attorneys in the state, representatives of community and civil rights organizations countered that assertion with testimony that the weakness of the act contributes to its lack of use by plaintiffs and their attorneys. Moreover, the committee found

¹⁶ Ibid. p. 57.

¹⁷ Ibid. p. 64.

¹⁸ *Who is Enforcing Civil Rights*, Finding 1, p. 22.

¹⁹ Ibid. Finding 1a, p. 22.

that complainants are often either unaware of where to file discrimination complaints or do not have the resources needed to identify and obtain legal representation.²⁰

The Arkansas Committee found that a lack of information on where to turn for legal assistance has also had an effect on civil rights enforcement in Arkansas. Public awareness about what local and state government civil rights agencies and community-based organizations do and the means by which these agencies can be contacted is very limited. Most citizens simply do not know that there are state civil rights protections and what these protections are.²¹

In its 2001 report, the Arkansas Advisory Committee called upon the state legislature of Arkansas to amend the Civil Rights Act of 1993 to make it substantially equivalent to federal laws and regulations and to establish a civil rights agency that is an arm of state government that allows the state to retain authority to address civil rights disputes and issues within Arkansas. A substantially equivalent law would make Arkansas eligible for federal funding with agencies such as HUD and EEOC.

A state civil rights agency may bring many benefits such as faster case processing; provision of an opportunity for education and training in civil rights; and effective and efficient administration of civil rights laws.²² It is always important, beyond the issue of justice, to determine the value added to the community as a whole from a state civil rights commission. For example, the Florida Commission on Human Relations has done a cost-benefit of its operations, and reports that for every dollar spent, businesses in turn save a dollar.²³

In addition, the Arkansas Committee urged a constructive dialogue on race relations and civil rights in Arkansas. Clearly with the large increase in the state's Hispanic and Asian populations, Arkansas would be well served to become proactive on civil rights in order to address the needs and interests of its diverse citizenry.²⁴

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²⁰ Ibid. Finding 1, p. 22.

²¹ Ibid. Finding 2, p. 23.

²² Ibid. Recommendation 1a, p. 22.

²³ Beverly Watts, Little Rock Hearing transcript, p. 61.

²⁴ Ibid. Recommendation 4, p. 23.

II. PERSPECTIVES FROM ELECTED OFFICIALS AND GOVERNMENT OFFICIALS

John Walker, Member of the Arkansas General Assembly

Representative Walker began his remarks by reminding members of the committee that Arkansas is one of the confederate states that mandated discrimination. Still today, African Americans are well aware of vestiges of discrimination that remain wherever they work and whatever they do:

These vestiges of past discrimination are in every area of state government from the executive of the state of Arkansas to the legislative branch and even into the judicial branch. This permeates everything that takes place with respect to public policy in the state. So there is an obvious need for some kind of information gathering source.²⁵

He continued:

The budget of a half million dollars [for the fair housing commission] is so inadequate given the pervasiveness of the housing discrimination If one looks at Little Rock right now, one can just look at the Arkansas River and go all the way up the river and go over to South University Avenue and come down 630, which is another way of dividing the city. One would see one city there that is rich for the rich and prosperous; and one city [that is] very poor without resources, which is almost dismal because there are no major enterprises . . . to serve the people on any basis.

Now, where is the discrimination? The discrimination is basically systemic, but it is at the edges where the present housing commission operates because you have to have a complaint first. The process is generated by the initiation of a complaint. And then it has to be investigated and then after that investigation there is some effort to resolve what the conflict may be. And then we get these settlements. But even with a settlement, the pattern remains.

²⁵ John Walker, Little Rock Hearing transcript, pp 16-39.

As I see it, the role of the United States is supreme by one society where people are treated fairly and equally and for people to believe that they are all part and whole rather than they are — that they are being treated as black people and as white people with that superior or inferior status. And that just goes all the way down into education. We have higher end and better schools, and then lower end and worse schools.

Why do you need more attention to this in Little Rock? There is none. When speaking with my legislative colleagues, we are afraid to raise the issue of race. When we do so, when you are bringing up something new like this — and I do not know how you face the problem unless you address it directly and unless you do so on an informed basis — that informed basis is blackened because there is no source in the state which makes a report of the status of race in Arkansas — the status of discrimination in Arkansas.

Now, at least one thing that happens when you have — of course, you have an opportunity for dialogue, absent your — you don't have it. I think that when you look at the lawsuits that are being opened up by the attorney general's office, none of them have been on race. None of them have addressed the issue of housing. None of them address the issue of education. They have been defended by the attorney general and their position is that there is just no discrimination. But it is all around us.

As to a state civil rights commission, I recall when former President and former Governor Bill Clinton was governor of the state he brought the subject up and he hired a person . . . to work to help assist in gathering information. I think it was his plan to have it expanded and to be made an agency of state government or to at least become a part of the attorney general's office. I don't know what happened to that. I think that as time went on, it just didn't happen because of political factors.

Michigan has generally been regarded more progressive than Arkansas in race relations. It does not have the history of segregation and discrimination that Arkansas has. There are a number of states that have had those commissions, and they have been very useful. But legislatively, they seem to begin in the attorney general's office and then they work their way out into being independent commissions. Regardless, such a commission

cannot have real significance unless it has independence. It has to be somewhat [inaudible] and somewhat [inaudible].

With all due respect to the process in Arkansas, the Martin Luther King Commission was created somewhat with the idea that it would be sort of a civil rights fact finding advisory committee to help resolve problems. But I don't think it was ever so presented as such. And it may be one way of addressing this issue by having that commission and its role better defined, given different authority, rather than simply just going around the state promoting goodwill.²⁶

Maurice Rigsby, Senior Assistant Attorney General, State of Arkansas

Maurice Rigsby noted in his testimony that the attorney general provides legal assistance to the state's fair housing commission. The Office of the Attorney General by default also seems to be a referral agency for citizens who need information as to which state agency or department can assist them in the resolution of a problem. Regarding the establishment of a state civil rights commission, Mr. Rigsby was non-committal although he did stress that for such to occur a strong case for its creation would have to be framed and presented.

The attorney general's office serves our state in many ways. Some are traditional and well known, and others are not. For the purpose of [this] meeting, the attorney general's office provides legal counsel and advice to the state agencies, departments, and constitutional officers.

The attorney general's office provides legal assistance to the Fair Housing Commission. The attorney general's office works on a day to day basis, on a monthly basis, on a meeting to meeting basis with the Commission staff to provide legal counsel as it relates to cases and other matters. The attorney general's office has provided resources and services to support the Commission.

The attorney general's office it seems by default . . . has fallen into the role of a clearinghouse. So the attorney general's office has played the role of fielding questions, fielding complaints, and referring them to the Arkansas Fair Housing Commission, to the

²⁶ Ibid.

EEOC, and to other relevant entities and organizations to help to resolve the matters. And so because the attorney general's office has typically been on the front line in fielding these questions on an immediate basis we have worked to make sure that citizens when they feel like they have run into a dead end with complaints, or have questions that they get to the appropriate state or federal office.

I think an organization [like a state civil rights commission] would be able to have a role. But for that to happen the issue needs framing really well There has to be an entity — whether it is academic, private, religious, or whatever it is — that is able to pull the information together to make the case and to give validity to the argument. But there has to be some process or entity that pulls that information together that is able to make a case to people, to legislators or to officials to say, here is the facts in a documented, organized way to move forward. And dialogue, I think, is a first step of that.²⁷

William Cash, Director, EEOC, Little Rock District Office

Mr. Cash explained EEOC's responsibility to enforce Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, sex, national origin, or religion. The EEOC also enforces the Age Discrimination Employment Act which prohibits discrimination in employment against individuals who are 40 years of age or older, and the Equal Pay Act of 1963 which requires equal pay for equal work for males and females. Finally, EEOC enforces the Americans with Disabilities Act. Mr. Cash explained the working relationship between the EEO and local substantially equivalent agencies known as FEPAs. He noted that as Arkansas does not have such an entity, the citizens of Arkansas receive a sub-standard level of protection in comparison to most other states.

One of the big differences between a state with a[n] FEPA and a state without a[n] FEPA is the amount of time you have to file your charge. In the state of Arkansas you have 180 days from the act of discrimination or the last date of discrimination to file your charge with the EEOC. In a state with a[n] FEPA, you have 300 days. To illustrate this point, if you work for ABC Burgers in West Memphis, Arkansas, and believe you have been subjected to sexual

²⁷ Maurice Rigsby, Little Rock Hearing transcript, pp. 9-16

harassment by the district manager, then you have 180 days to file your charge. However, if you are five miles away in downtown Memphis working for the same business and are sexually harassed, arguably by the same person, you now have 300 days to file your charge.

Now, I know that math seems obvious, but I have worked with charges for 20 years now where you have had that basic inequity. It's hard for me to wrap my brain around how that works — how the people of the state of Arkansas can accept not having a[n] FEPA.

As to current EEOC charge processing, in the last fiscal year 2011 the EEOC took almost 100,000 charges nationwide. In the state of Arkansas we took 1,666. Now, there are things about Arkansas that are unique. Nationwide, the largest basis for filing a charge is retaliation, being subjected to unlawful conduct for engaging in a protected activity. In the state of Arkansas, the largest basis is still race discrimination. In the fiscal year 2011, 44.7 percent of the charges filed with the EEOC from persons in Arkansas were based on race. The second largest bases, about 30 percent of our charges last year, were sex discrimination. So, retaliation came in as third.

And as I mentioned, we have Fair Employment Practice Agencies throughout the country that we have work sharing agreements with. We have staff members that coordinate our efforts with the FEPAs. Now, as most of you know, most of the laws enforced by the EEOC require that an employer have 15 or more employees for 20 or more calendar weeks in the current or preceding calendar year. The ADEA requires that the employer have 20 employees for that same time period. But when we look at the Arkansas Civil Rights Act of 1993, it provides for protection for discrimination for employees who work for employers who have as few as nine employees. Obviously this is a very significant difference between the laws enforced by the EEOC.

The EEOC does do outreach throughout the state. As part of this we speak to employer groups, what we call our stakeholders. We also have set up programs to talk to young people coming right out of school working in their first jobs. We go to the four corners of the state trying to get the word out about an individual's rights to file charges of discrimination if they believe they have been

subjected to employment discrimination. Despite these efforts, I cannot tell you how many times when we talk to somebody that they say, ‘Well, I didn’t know I could do that, and I didn’t know I had to do it within 180 days.’ So I think one of the great benefits of having a state agency would be further assistance in getting the word out to the people of Arkansas that they don’t have to work in a workplace where they are subjected to discrimination.²⁸

Deborah Freeman, Equal Opportunity Specialist, HUD

Ms. Freeman discussed HUD’s responsibility to enforce the Fair Housing Act. The Fair Housing Act, also called Title VIII of the Civil Rights Act of 1968, prohibits discrimination in the sale, rental, or financing of housing as well as other housing related transactions on the basis of race, color, religion, sex, national origin, handicap, or familial status.²⁹ Ms. Freeman noted that the federal agency had a working relationship with the Arkansas Fair Housing Commission.

The Fair Housing Equal Opportunity (FHEO) unit of HUD consists of ten regional offices. The state of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas are covered by Region Number VI, also referred to as the Fort Worth Regional Office. [FHEO] has two types of grant programs. The first one is FHAP, the Fair Housing Assistance Program. That program provides grants to state and local agencies that have been determined to have laws substantially equivalent to the Fair Housing Act itself so that they may carry out activities related to enforcing the Fair Housing laws. They investigate — they take complaints and investigate them.

The second one is the Fair Housing Initiative programs; it’s called the FHIP. It provides funding to public and private entities, formulating and carrying out programs to prevent and eliminate

²⁸ William Cash, Little Rock Hearing transcript, pp. 202-09.

²⁹ In her testimony, Ms. Freeman also noted that HUD enforced Section 109 of the Housing Community Development Act of 1974, Section 504, the Rehabilitation Act of 1973, Title II of the American with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments Act of 1972, and the Architectural Burdens Act of 1968. In addition to that, FHEO enforces several presidential executive orders such as Executive Order 11063 that applies to non-discrimination of equal opportunity in housing. That also applies to sale, leasing, rental, and other disposition of property. Executive Order 12892, equal opportunity in housing, requires the programs and activities related to Housing and Urban Development to be administered in a manner that affirmatively furthers fair housing. And Executive Order 12898, environmental justice, requires federal agencies to conduct programs, policies, and activities in a manner that would not substantiate or effect human health or the environment in a manner that would have the effect of discrimination on the basis of race, color, or national origin.

discriminatory housing practices. So FHIP would be a grant that a private entity would apply for and they would perform education and outreach. We provide education and outreach as well, and FHAP agencies also provides education and outreach.

Now, we accept all housing discrimination complaints for the entire state, as well as we have a FHAP that is a grant administered by HUD. The Arkansas Fair Housing Commission also accepts complaints of housing discrimination. So you have two agencies within the state; that is the federal agency, which is my office, and then you have the state agency that handles housing discrimination complaints.

We accept the complaints and we do the full investigations. A complaint has to be filed within one year of the alleged act. If it is timely filed then we . . . the investigation has to be done within 100 days. If a charge of non-discrimination is issued, or a no-cause discrimination is issued, then the parties receive the notice of right to sue where they can go take it privately themselves. But if HUD finds that discrimination did take place, then HUD has legal staff to pursue it into the courts for them.³⁰

When asked by members of the committee about the efficacy of a state civil rights commission in Arkansas, Freeman responded:

As far as I see it, the [state] commission would be able to provide things along the lines of education and outreach. But as far as handling [housing] complaints, I think probably our agency would still be able to do that as well as the Arkansas Fair Housing Commission. But education and outreach, [a state civil rights commission] could bring more education and outreach.³¹

Carol Johnson, Director, Arkansas Fair Housing Commission

Carol Johnson told the committee that the Fair Housing Commission is a relatively new agency, and she was involved with the agency as it developed internally and in collaboration with federal enforcement agencies. Addressing efficiency, she said that one reason the Fair Housing Commission was established was to help expedite the state in its processing of the large number

³⁰ Deborah Freeman, Little Rock Hearing transcript, pp. 209-29.

³¹ Ibid.

of housing complaints received by various state offices. She also opined that as different civil rights laws mirror each other, it makes a lot of sense to create and join all civil rights enforcement at the state level into one agency.

As you all know, Arkansas was one of the last states to enact any kind of civil rights legislation. The Civil Rights Act of 1991 was the state's first civil rights legislation. Then in 2001 the Legislature passed Act 1785 of 2001 — the Fair Housing Act. This was amended in 2003 to make it substantially equivalent. So in the history of civil rights legislation, the state is fairly new in [state level] enforcement of civil rights.

I became the commission director in 2005. At that time the Arkansas Fair Housing Commission was a very new agency, having just been established in 2001 [As a new agency] the Commission had to go through the “substantial equivalency process” with HUD. So when I started at the Commission I was the person who transitioned the agency through that capacity building phase to the fully functioning fair housing, fair lending enforcement agency that it is today.

The Fair Housing Commission operates with both federal and state funding but the vast majority of the funding is federal funding. The Fair Housing Commission is a quasi-judicial regulatory enforcement agency. That means it has the enforcement authority to have administrative hearings. It also conducts the investigation process from initial intake through enforcement.

The law requires that anyone who has a complaint be able to file a complaint with our agency. Since I have come to the Commission, every year we get a growing number of complaints. This past year we had about 350 complaints, and closed around 160 cases. The Commission gets a lot of referrals from different agencies, the attorney general's office, the governor's office, the Arkansas Development & Finance Authority, the Center for Arkansas Legal Services, Legal Aid of Arkansas, the Disability Rights Center. A lot of these agencies have a lot of overload and so we get all of the housing cases. To the complaint process, I believe that impartiality in investigating these complaints is critical [to] have fairness in the administration program.

Every year I go before the legislature and testify about why we have a civil rights agency. [I am asked, “Why do we need fair housing. We’ve got HUD?”] I have even heard comments that discrimination does not exist. I mean, we get so many complaints and I will tell you that the reason — you know, one of the reasons that the Fair Housing Commission was established in the first place was to help try to process those complaints, the expediency of case processing, you had someone who was out of state, you didn’t have the local expertise, the knowledge of the area.

Unlike most other states, our state law right now does not [provide for] a statewide enforcement agency to handle the issues of employment and public accommodations. Title VII, which is employment law, is enforced by the EEOC. Title VII law and Title VIII, which is the Fair Housing Act, very closely mirror each other. So when you are talking about civil rights enforcement . . . there are so many other areas of civil rights and civil liberties that are not being enforced. [A state level commission] would incorporate all of these other areas. The need for civil rights enforcement is very great and very real, still, in the state. Because we still need [civil rights enforcement] we need an agency that is going to be broad and that is going to fully encompass all of the civil liberties and civil rights.³²

³² Carol Johnson, Little Rock Hearing transcript, pp. 269-80 and 331-32.

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III. PERSPECTIVES FROM ACADEMIA

Adjoa Aiyetoro, University of Arkansas, Institute on Race and Ethnicity

Professor Aiyetoro affirmed her support for the establishment of a state civil rights commission. She noted one reason for her support is the unfortunate historical legacy of Arkansas, i.e., the deep roots of discrimination and injustice along racial and ethnic lines in the state. Moreover, in her opinion, a civil rights commission could also serve a non-adversarial role and mediate disputes in a non-confrontational arena. Aiyetoro also stated that to effectively examine race and ethnic problems in order to propose effective solutions, there needs to be data. A state civil rights commission could likely be the instrument to provide such data.

Yes, there is a need for a state civil rights agency that focuses on complaints of violations of civil and human rights that are protected by both state and federal laws, including the federal and state Constitutions . . . Start with a strong conviction that racial and ethnic prejudice and discrimination exists, that racial and ethnic justice has not been achieved. The moral issue is settled, but racism [still] exists.

The Institute supports multiple avenues for correcting injustices on racial and ethnic discrimination, many of these injustices having deep roots in the history of Arkansas. Having a state human rights commission . . . with the authority to hear and investigate complaints of violations of human and civil rights . . . A human rights commission would be a place where people throughout the state who experience conduct that they feel is discriminatory based on their group identity could bring that complaint, have it investigated, and be provided a suggested solution or resolution.

A state agency is also needed to assist in enforcing civil rights in Arkansas because Arkansas is one of the poorest states in the United States. Many of Arkansas's residents do not have the financial means to initiate processes to resolve a complaint of discrimination and do not have access to legal aid programs that would provide legal services at no charge.

Also, a human rights commission could serve a non-adversarial role and we could listen a lot under this panel's legal academia but sometimes, you know, I think we forget that there are other ways to resolve disputes, issues, and our concern about race and ethnicity and the other discriminatory areas that we are concerned with besides going to court and that's from a lawyer that was a litigator for 25 years.

[In addition] a commission will help foster a sustained awareness of the issues of race and ethnicity. Second, [it will help by] providing research based information and informed policy recommendations on issues of race and ethnicity We continue to have what we call structural racism. So we have both of those, and I think a commission would serve a great purpose in being able to get information about that, us sharing it with the public

A Human Rights Commission will also be very helpful in [providing] information that researchers can use as they draw a picture of the state of racial and ethnic justice/injustice in Arkansas. The data will be especially useful in advocating for policy initiatives that will exist — that assists Arkansas in reducing if not eliminating racial and ethnic disparities in many of the most fundamental areas of life, including contact with the criminal justice system, access to healthcare, and those things necessary for healthy living, education, and employment.³³

Terri Beiner, University of Arkansas, Little Rock, School of Law

Professor Beiner stated that there were compelling reasons for the establishment of a state civil rights commission. The primary reason in support of such an agency is that without a state commission, access to civil rights justice is simply out of reach for most persons. The few civil rights cases filed in state court since the enactment of the act are evidence of that point. In addition, simply by representing a plaintiff, a state commission opens up settlement opportunities without the expense of a court action.

To my mind, there is very little doubt that civil rights, generally, is under-enforced in Arkansas. Arkansas came [at it] grudgingly into the modern civil rights era. [The state] did not have a civil rights act until 1993, and then it was really only because then Governor Clinton was being embarrassed by the fact that Arkansas was one of two states without a Civil Rights Act. So it does not come as any great surprise that nearly 20 years later we are still talking about whether or not Arkansas needs a civil rights commission to help enforce civil rights in Arkansas.

I personally believe that we definitely need a Civil Rights Commission. I believe so for several reasons. First, there simply aren't enough lawyers who are available to do these cases for persons who feel they have been discriminated against. This causes significant access to justice problems for potential plaintiffs out there.

³³ Adjoa Aiyetoro, Little Rock Hearing transcript, pp. 155-63.

Second, the Arkansas Civil Rights Act . . . offers some advantages to Title VII, its federal counterpart.

[Finally] there are relatively few cases brought under the Arkansas Act in state court, and this leads to less development of that law under the Civil Rights Act. I think a commission, especially with authority to bring lawsuits, including class actions on behalf of plaintiffs and [to] provide authoritative interpretations in the Arkansas Civil Rights Act can add to the development of both the state act and, to a certain extent, Title VII, which, to my mind as I explained earlier, has suffered greatly at the hands of the Eighth Circuit in recent years.

[In state courts] there have been only 66 reported cases under the Arkansas Civil Rights Act. That is 66 cases in 19 years. So [the act] certainly is being underutilized. We do see plaintiffs raising Arkansas Civil Rights Act claims in federal courts . . . along with their federal Title VII suits. A search [lists] 438 cases that mention the Arkansas Civil Rights Act. So it seems to be playing out a bit in the federal court system, although the state court system is not getting many cases.

The problem is civil rights is a very expensive proposition (and) the chances of success are low in these cases. And this, of course, ends up with access to justice problems. The average income here in Arkansas is a little over \$21,000 a year for the average person. That means that lawyers in these cases take them, hoping that they will win and that it will generate a fee because both the Arkansas Civil Rights Act and Title VII are fee generating statutes. If you win, you get your attorney's fees. So this means you have got to have a case that is winnable. And, of course, that means that any kind of novel theory or a case that's on the fringe, a lawyer is not going to take.

I also think [the creation of a civil rights agency] is an opportunity for education. [It is helpful] to have a group that can come and talk . . . whether it is in the workplace or among law enforcement persons and do educational outreach [on civil rights] as to what is and what is not appropriate.

From my perspective, I think civil rights remains an elusive goal for Arkansas and unrealized for many Arkansans. I think sometimes just knowing that there is an entity paying attention to what folks are doing, what employers and governmental officials

are doing, makes those entities behave better. It makes people who are involved behave better.³⁴

Katherine Mitchell, Shorter College

Katherine Mitchell told the Arkansas Committee that the discussion regarding the establishment of a state civil rights commission has been ongoing since the Arkansas Civil Rights Act was first passed in 1993. She saw the need for the creation of such a state agency when the act was first passed, and she continues to be supportive of such an agency particularly in light of the history of racial discrimination in the state that was so overtly manifested in the segregation of its public schools.

Many years ago when I served on the [Arkansas Advisory Committee], we were trying to address this same issue — the creation of a state civil rights agency. So I am glad to see the issue resurfacing, and for the attention, again, being drawn to it. As I was in favor of a civil rights agency some years ago when I served on the commission, I think that we still have a need for it.³⁵

My daddy had a seventh grade education. My parents grew up in Hempstead County, Hope, Arkansas. My mother had a 10th grade education. It was not her desire to stop her education there, but there were no educational opportunities for her back then where she lived. In order for African Americans to continue their education past 10th grade, they had to move to an area like Little Rock that had colleges like Shorter College, Arkansas Baptist College, Philander Smith College, and Arkansas AM&N that is now UAPB, the University of Arkansas at Pine Bluff.

I remember growing up in Little Rock . . . and I [consider myself] fortunate to have grown up in Little Rock even though I attended a segregated school. I remember that I was going into my 10th grade year when Governor Faubus closed the four high schools in Little Rock. I was fortunate to be able to continue my education, ironically, in Hope, Arkansas, because I had relatives there. A lot of my classmates did not have such an opportunity to continue anywhere else, and so left school.

[Eventually] the schools in the Hope area became overcrowded. At first there were a couple of high schools in the county school district, and then there was

³⁴ Terri Beiner, Little Rock Hearing transcript, pp 107-16.

³⁵ Katherine Mitchell is the past Chair of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights.

one — the Catholic High School, St. Bartholomew. But after that school reached a certain capacity it could not house any more students in the classroom. So I was forced to move back to Little Rock after I had completed a large portion of my education in a new school. Educational opportunities for African Americans have always not been equal. Even today it is not equal.

For most of my professional life I have worked in education. As part of that experience, I have worked at historically black colleges and universities, as they were identified back in 1965 by the federal government. The value of these institutions was evaluated and it was determined that they were making a vast contribution to the country, educating students who became very good productive citizens. I think about now how students who have migrated in with their parents, or who came — who were born here who are not able to go to school, or some of them not able to go to college . . . I have worked basically on higher education — in the higher education institutions.

I think about how most of our ancestors migrated here. I know that some of my ancestors had been forced to come, but after we came and things started to happen favorably in some situations for them, they were able to advance in their experience. The situation is the same for people who are migrating into the state now, and that is an opportunity to have access to other opportunities. I cannot understand why we would deny them that opportunity. I think [persons] need that same opportunity to grow, develop, and become productive, contributory citizens in our country. I was in favor of a civil rights agency years ago, and I continue to think that we still have a need for it.³⁶

³⁶ Katherine Mitchell, Little Rock Hearing transcript, pp. 135-40.

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IV. PERSPECTIVES FROM THE LEGAL COMMUNITY

Jan Baker, Managing Attorney, Disability Rights Center of Arkansas

Jan Baker told the Arkansas Committee that there are over 550,000 self-identified persons with disabilities in Arkansas. She said the Disability Rights Center (DRC) receives over 200 phone calls every month alleging discrimination in education opportunity, fair housing, public accommodation, and employment. Baker said that in 1998, Bill Cain, then General Counsel of the DRC, appeared before the Arkansas Advisory Committee in support of legislation to create an administrative agency for civil rights enforcement. She said that was 14 years ago, and the DRC has the same position as it did then, it supports a state civil rights commission.

The Disability Rights Center is the protection and advocacy system for people with disabilities in Arkansas. It is federally funded, created by Congress to protect the personal, legal, human, and civil rights of people with disabilities. Generally, there are one to two attorneys in the office and between 10 and 12 advocates that work to advocate for the rights of people with disabilities. The DRC provides services with no charge.

From the latest census there are over 550,000 self-identified people with disabilities in the state of Arkansas. As a protection and advocacy system, we are supposed to address the issues regarding people with disabilities, and so we are not able to represent every single person who calls us. We receive over 200 plus calls per month. The majority of those calls are alleging discrimination in the area of education. Parents are calling us about their children who are suspended or expelled from school because the school system cannot address their child's disability issues

We get calls on a daily basis regarding housing discrimination. People are calling us — people with disabilities who have been evicted from public housing because of their behaviors. We have gotten calls from people regarding housing issues because their landlords will not provide an accommodation for the person who needs either a parking space closer to their apartment building or some grab bars in their bathrooms, or changes to be made to their specific apartment; they need to move to a first floor apartment

now that they have become incapable of walking up the second floor of a flight of stairs in their current apartment.

We get complaints from people calling us about businesses and that they cannot access the business services in the businesses because the parking lot is not striped, or because there are five steps up to the front entrance and there is no accessible ramp to get inside, or the goods and services inside the business are not accessible, and there is no signage to tell the person with a disability how to ask for help.

We get calls regarding rights violations in institutions like the Arkansas State Hospital where people [who] are in a hospital setting to get treatment for their mental illness We get calls from people who are in human development centers and as you know We get calls from people who are in residential care facilities in the state, which are really just rent and board facilities We get calls regarding government benefits — the fact that people are applying for SSI and they are being denied.

Bill Cain, our former general counsel, appeared before this commission in 1998. He said that DRC would support legislation to create an administrative agency for civil rights enforcement That was 14 years ago. Our position is the same today as it was then. Yes, we support a state human rights commission.³⁷

Holly Dickson, Staff Attorney, ACLU of Arkansas

Holly Dickson enumerated the difference between civil rights and civil liberties. Whereas civil liberties concern basic rights and freedoms that are guaranteed under the Constitution such as the right to free speech, a civil right is the basic and fundamental right to be free from unequal treatment based on some characteristics such as race, gender, or disability in settings such as employment or housing. In the opinion of Ms. Dickson, the paramount importance of ensuring civil rights for all state citizens and residents makes the creation of a state civil rights commission an imperative in the provision of equal justice.

Civil rights has been that basic and fundamental right to be free from unequal treatment based on some characteristics such as race,

³⁷ Jan Baker, Little Rock Hearing Transcript, pp. 172-77.

gender, or disability, in settings like employment or housing. Whereas civil liberties . . . concern[s] basic rights and freedoms that are guaranteed to all Americans such as the right to free speech and freedom of religion.

As to who is enforcing civil rights in Arkansas, our state attorney general does a great job with consumer protection and other public protection cases, but they defend and do not bring civil rights litigation. Our legal aid and legal services organizations, just like those across the nation, are prohibited from bringing civil rights cases. Enforcement falls then upon the U.S. Department of Justice, members of the Arkansas Bar, and organizations that act on behalf of people whose civil rights have been violated.

Nonprofits that bring civil rights cases in Arkansas rely on those same members of the Arkansas Bar to volunteer [and] pursue those types of cases. They are the same persons that volunteer for legal aid and are otherwise bringing private cases to attempt to address civil rights and civil liberties violations in our state. We simply lack state enforcement of our civil rights laws

We have people in Arkansas who are falling through the cracks every day. This is in all areas, not just geographically but topically and [it] seems to have a burden on those who have less income, less wealth, less resources because they are not in a position to hire private counsel. It seems to us that the vast majority of civil rights violations in Arkansas simply go unaddressed. They are not addressed in a court of law, they are not addressed in terms of public policy, [and] they are not addressed in the legislature.

We could see the role of a commission obviously [not only to pursue this work], but to collect information and data. There are obviously continuing problems in Arkansas with respect to public accommodations, housing, and employment. But there is a vast majority of other civil rights and civil liberties issues that fall outside of these three major areas. We need a reliable source of information to tell us [whether] our perceptions match with reality? What are our perceptions? What are the perceived problems of the people of the State of Arkansas? With that information we would be in a position to have those issues addressed through public policy.

I am all for education and prevention as well. We are all better off if that is the case. We need education of the public about their rights and their responsibilities under state and federal law, and we need to assist our public officials in respecting those same rights and responsibilities and helping them implement these things. A state civil rights commission could make policy recommendations to the Arkansas legislature. Education, of course, is limited unless you have that data collection. So I would stress the importance of the commission to be able to do something in order to be able to obtain reliable data and information from the community.

My final point would be — we need this yesterday.³⁸

Dean Chuck Goldner, Arkansas Access to Justice Commission

Dean Emeritus Goldner is a professor at the University of Arkansas at Little Rock William H. Bowen School of Law, but appeared in his capacity as a member of the Arkansas Access to Justice Commission. That Commission was created by the Arkansas Supreme Court in 2002 with the broad charge to “access to civil justice for all Arkansans. Dean Golder expressed the view that a state civil rights commission would be helpful for ensuring justice.

[The Justice Commission] has a number of programs that have been undertaken to try to work toward achieving the goal to access civil justice for all Arkansans. For instance, the Commission works to increase the number of lawyers in the state who do *pro bono* (no charge legal representation) for people of limited means. We also have focused on that there are not enough lawyers who are doing the representation for persons of limited means, which means we have a lot of *pro se* litigants (self-represented litigants) in our courts

Why a [state civil rights] commission would not be a duplication of something that is already out there . . . the two legal service providers [in the state] have to turn away about 50 percent of the people who qualify for their representation. And let me tell you, you don't have much money if you are going to qualify. It's approximately \$27,000 a year for a family of four. If you make more than \$27,000 a year for a family of four, in theory, you can

³⁸ Holly Dickson, Little Rock Hearing transcript, pp. 282-96.

afford to hire a lawyer. I think the lawyers in the room know how likely that is.

So because of the funding level and the resulting staffing level, we do not have nearly enough attorneys, paralegals, support staff, in our two legal service providers. So they turn away up to as many as half of the people who even qualify and contact them. Of the cases that they take, I would say they do a type of triage on it, because even for the cases that they take, they cannot always do full representation for the person.

In terms of civil rights or civil liberties cases, by federal statute and regulation the legal service providers may not take representation that can be fee generating. There are a number of the federal civil rights statutes that, in fact, can be fee generating. So they could not take those even if they had enough people to take them on.

The [two legal service providers] do receive calls from individuals and they recognize that they have potential civil rights violations [and] civil liberty violations. They have attorneys who are on a help line, and when they get enough basic information to learn the type of issue or problem the person on the phone has . . . if there is in fact a federal agency or a state agency that has jurisdiction to look into those things, they are given the contact information.

To give a feel for [the need], last year the Center for Arkansas Legal Services had 35 contacts that they concluded were really civil rights problems. But these were cases they could not take on either because they could be fee generating or because it just did not make it high enough on the list in the triage for the cases that they take. So they had 35 cases that were employment, fair housing discrimination, other types of civil rights issues that they marked as “Closed, Advice Only.” What that means is that they told the caller there is a possibility you have this particular type of claim, here is who to contact to try to pursue this.

So I think my primary message to you today is yes, there [are] problems out there and that a state civil rights commission would

absolutely not overlap in the missions with the Access to Justice Commission.³⁹

Dan Herrington, Attorney, Law Firm of Friday, Eldredge & Clark, LLC

Dan Herrington addressed the Arkansas Advisory Committee from his experience working primarily as a defense attorney for employers in civil rights cases and employment discrimination cases. Mr. Herrington, while acknowledging that discrimination continues to exist and that anti-discrimination laws are necessary, spoke against the creation of a state civil rights commission. In his opinion, society cannot simply solve every social ill by establishing more governance.

Let me begin my remarks by saying that we all recognize that illegal discrimination is not only illegal, but it is wrong, it is a sin, and it is against my Christian faith. Employment defense lawyers are no more in favor of discrimination than criminal defense lawyers are in favor of murder. No person speaking on this topic either for or against the idea that we need a state civil rights agency will disagree that the existing anti-discrimination laws are necessary and appropriate.

People of good faith, however, can disagree over whether we need an additional layer of bureaucracy to enforce the laws We simply cannot solve every social ill by establishing more and more layers in offices and more and more government employees.

The committee's 2001 report listed three purported benefits of a state agency: faster case processing, greater opportunity for education and training, and an agency would serve as a vehicle for effective and efficient administration of the civil rights laws.

As to faster case processing, in my 17 years' experience as an attorney practicing, a vast majority of my practice takes me in front of the U.S. Equal Employment Opportunity Commission. It has been my anecdotal experience that it takes — if a case is investigated fully — about six months from filing to dismissal. Many cases now go to pre-investigation mediation. Those cases are obviously resolved typically in a month or two of the filing.

³⁹ Dean Chuck Goldner, Little Rock Hearing transcript, pp. 334-43.

Federal court is much faster than state court, so if one result of a state agency is to funnel more cases to the state courts, we will make that problem worse.

The second purported benefit of a state civil rights agency is the opportunity for education and training. The EEOC provides education and training. The state bar association does that. Indeed this body is charged with doing that. For-profit companies and nonprofit organizations alike train employers on how to comply with the law rather than to circumvent it as some would charge. Defense lawyers like me also do this training. I have advised countless employers to take a step back and to pursue progressive discipline with the goal of turning around poor performance or bad attendanceIn today's competitive market, employers who make decisions on illegal criteria such as race do so at their own economic peril.

The third benefit is purported effective and efficient administration of the civil rights laws. I submit to this body that it would not be efficient to duplicate what we already have in the federal EEOC. The EEOC is efficient. Duplicating that system at state taxpayer expense would not be. We don't need to add another state agency to the almost 400 boards and commissions that are already on the books in the state of Arkansas, to address this problem.

In sum, there is no need to create another duplicative office at state taxpayers' expense. Arkansas is the thirty-third most populous state, but ranks twelfth in the number of state employees as a percentage of total state employment. There is a national average of 182 state workers per 10,000 citizens. Arkansas has 220 state employees for 10,000 citizens. Again, I believe that we have enough state government.⁴⁰

Philip Kaplan, Attorney, Law Firm of Williams & Anderson

Philip Kaplan first spoke to the Arkansas Advisory Committee on the establishment of a state civil rights commission at a hearing in 1998. He told the committee that when he spoke to the issue at that time it was his position that there was no need for a state civil rights agency. Through the intervening time to the present, he still holds that position.

⁴⁰ Dan Herrington, Little Rock Hearing transcript, pp. 428-39.

In the environment in this state, it just does not seem conceivable to me that there would be a possibility of getting an act through the Arkansas Legislature that would create a commission and supply the funding. You can create all the commissions you want. You still have to supply the funding. So what would it take to fund a commission, two or three commissioners, plus staff, plus the ability to litigate? Whether it is a federal agency, a state agency, or an individual practitioner, to fund a case with what contemporary discovery requirement takes costs several thousand dollars in depositions, copying costs, travel, and so on If you are talking about litigating more than a few cases, then you are talking about hundreds of thousands of dollars to staff and try cases.

That notwithstanding, what happens in Washington has an effect on civil rights enforcement. We have seen a dramatic change in how the EEOC operates since President Obama was elected. The fact is that before his election it was rare when cases got investigated by the EEOC. It was even rarer when cases got litigated. That is not true anymore. We have had three or four cases in our office where the EEOC has been the plaintiff's lawyer, and many, many, more cases. So why deal with something that the EEOC is now dealing with?

More and more the cases, the charges that we receive are mediated. We accept invitations almost universally to mediate, and the mediation process is very effective. How many of those get settled for minimal amounts? I can tell you that in my experience, most of them get settled for minimal amounts. And when I say "minimal" I mean \$250, \$500, \$1,000, maybe even \$1,500. And why is that? It's because the cases really have no merit. It costs an employer several thousand dollars just to have a law firm open the file and hold the initial meeting with the employer and the witnesses. And if it gets past [a] mediation where there is a full investigation by the EEOC, [then] you cannot get it done as the employer for under \$10,000 or \$15,000 in terms of legal fees.

With regard to a few cases under the Arkansas Civil Rights Act (ACRA), I have not seen a complaint in federal court in many years that did not include an ACRA allegation. Every complaint that gets filed now includes an Arkansas Civil Rights count of some kind. State courts and the Arkansas Supreme Court have made it clear that state courts are just as free as federal courts are

to grant summary judgment motions and it happens with increasing frequency.

Are there still problems with public accommodation? I think that there are still problems with public accommodations but I think they are rare. The reason for my saying this is because I do not see cases coming out of either the Arkansas Supreme Court or the circuit dealing with public accommodations. It is possible that means they are not coming out of those courts because there are not enough lawyers to file them or they are somehow being swept under the rug. I think it is more likely that there really just is not that kind of a universal problem or a very serious problem with public accommodations.

Is there still discrimination against Hispanics, against African Americans, against women? Yes. But it seems incredibly unlikely that a state civil rights commission could be created, funded, and develop the expertise to handle cases the way the EEOC has been able for the last 40 years.⁴¹

Julie Larson, Regional Attorney, Arkansas Justice for Neighbors

Julie Larson told the Arkansas Advisory Committee that in her work she provides free immigration and legal services to state residents. In her opinion, creating a state level civil rights commission sends a clear message to every resident in the state that he/she is not invisible, that his/her voice is important, and that his/her grievances can and will be addressed.

As the regional attorney for Arkansas Justice for Neighbors, I provide free immigration and legal services to income eligible immigrants throughout the state. Whether they are asylum seekers from Eritrea fleeing persecution, lawful permanent residents from Mexico seeking citizenship, or young undocumented students from Hungary seeking a chance to work their quest for legal status is only part of their struggle. Many live lives of separation with one eye looking forward while the other watches their backs. They live in fear of being denied a right that has always been rightly theirs. They live in fear of being turned down for an apartment due to the color of their skin or of having to navigate a doctor's appointment with broken English skills.

⁴¹ Philip Kaplan, Little Rock Hearing transcript, pp. 122-34.

These individuals are some of the most vulnerable of our community — and if we fail to protect them, the well-being of our entire city suffers. When a Salvadoran laborer receives no pay for his backbreaking work in the logging industry, we allow unscrupulous employers to act with impunity. When a police officer stops a Mexican immigrant without cause, she is redirecting our tax dollars away from our real enforcement priorities — arresting and prosecuting violent criminals who pose a genuine threat to our public safety. When we fail to hire medical translators, we pay extra in the long run when clients are misdiagnosed due to miscommunications. With that said, I would welcome the opportunity to share a few stories that my clients have shared with me.

Rhonda is the kind of person you would want to call in an emergency. After being laid off from her job as a child care worker, she applied for unemployment benefits and qualified. She completed her interview, sans translator, and thought she had understood all the requirements. She worked part-time and continued to collect unemployment benefits, all the while sincerely believing that she was complying with all the regulations stipulated to her. Imagine her shock and shame when the letter arrived at her doorstep. This time around she enlisted the translation assistance of her 19-year old son and began repaying what she owed. By not providing material in different languages or access to translators, we do our non-native foreign citizens and residents a great disservice. We do the community a disservice too — by having taxpayers pay more than they should due to miscommunications.

Paula has kind eyes and a welcoming smile. She is someone who makes you feel at ease almost instantly. A young mom in her 20s, Paula's health is deteriorating. She had visited several doctors who prescribed half a dozen kinds of medication, all to no avail. She eventually ended up in the emergency room with intense abdominal pain, the same pain all the other doctors had tried to cure. Her affinity for spicy foods had led to gallbladder stones and a subsequent surgery. For any of us a major surgery is nerve racking. Yet for someone with limited English skills, it is much more so. From the time Paula entered the emergency room until the time of her surgery, she had no access to a translator. By not

hiring a significant number of translators, we do non-English speakers a great disservice.

My clients, not unlike many of you in this room, request a chance to be heard, seen, and understood as well as to complain when things are not as they should be. By creating a civil rights commission, we send a clear message to every Arkansan that you are not invisible. You matter and your voice is important. Your grievances can and will be addressed.⁴²

Christina Monterrey, Attorney, Monterrey-Tellez Law Firm

Christina Monterrey spoke to the Arkansas Advisory Committee from her vantage as a partner at a fully-owned Hispanic law firm, for which the vast majority of clients were Hispanics. In **our** opinion the state does need a commission because civil rights abuses are occurring on a daily basis. There is evidence of racial profiling. For these kinds of abuses and many other injustices the state needs a civil rights commission.

I am a partner at a fully owned Hispanic law firm in the state of Arkansas The vast majority of my clients are Hispanic. We deal mostly with immigration, criminal cases, and family law. When I think of whether we need a commission I think whether there is an ongoing situation that needs to be addressed: What are the violations or the injustices that we see on a daily basis?

The most common civil rights violations that we see is racial profiling while driving specifically with respect to Latinos. The most common and obvious violation occurs when a Hispanic person in Arkansas is pulled over, cited for no driver's license and no other traffic violation and then is taken directly to jail.

Just some quick statistics so you guys know that these aren't my numbers. In 2011 the Bryant Police Department issued a total of 156 citations for no driver's license; 98 of those tickets were given to drivers with Hispanic last names and 58 to drivers with non-Hispanic last names. Seventy-six of the drivers went to jail and of those 59 were Hispanic, meaning that 60 percent of the Hispanics cited for no driver's license went to jail compared with 24 percent of non-Hispanics that were cited for the same violation.

⁴² Julie Larson, Little Rock Hearing transcript, pp. 440-58.

Similarly in 2011, the Benton Police Department issued a total of 165 citations for no driver's license. Eighty-three were given to individuals with Hispanic last names and 82 to individuals with non-Hispanic last names. Forty-two drivers went to jail. Twenty-eight of the people who went to jail had Hispanic last names. In percentages, that means that 34 percent of the Hispanics given a traffic citation for no driver's license went to jail compared to 15 percent of the non-Hispanic drivers. There is no justifiable reason why Hispanics with no driver's license citations should be taken to jail at a higher rate than non-Hispanic drivers, unless you take into consideration that the end goal may be to get them into the custody of the jail and then have a detainer placed by Immigration and Customs Enforcement.

We also see frequent injustices against Latinos taking place in booking procedures. We frequently see Latino persons detained without charges for four to six hours, and that's an average, some are less, some are more without — so they are detained for this amount of time without charges. They cannot pay a bond [even though] they don't have any charges pending and there is no detainer.

So those are the many reasons that I think that we do need a civil rights commission in Arkansas. The above examples demonstrate that there is different treatment of Hispanics, which is who I can speak to, and different treatment of Hispanics by law enforcement in the state of Arkansas, and that treatment seems to be based solely on race.

As of right now we do not have a centralized body to investigate civil rights violations and ensure that civil rights laws are enforced equally and even handily. We have various commissions and task forces throughout the state. As far as I can see, the only way to ensure that law enforcement respects the civil rights of Latinos in Arkansas is by establishing a single commission that is responsible for investigating civil rights violations and ensuring that our civil rights laws protect [everyone] equally.⁴³

⁴³ Christina Monterrey, Little Rock Hearing transcript, pp. 163-71.

V. PERSPECTIVES FROM COMMUNITY GROUPS

Dale Charles, State President of the NAACP

I think that we have a need for a civil rights commission for a number of reasons, and here is an example. A female head of household who is the sole support of her family gets propositioned by her supervisor, sleeps with him, and then gets fired. Now she has to go and file an EEOC complaint We heard today it takes as much as 18 months before that case goes to trial. Well, what is she going to do for 18 months? She's got a family. What is she going to do? [Some speakers claimed] that we don't need another tax based organization taking away his tax dollars. Then the question is: If we had some means out here to address these issues, then we can deter a lot of them. Right now there's really nothing out there to deter this kind of action.

[The NAACP] gets all types of complaints, voting right issues, police brutality issues, biracial marriage, a student being bullied in school, education issues, employment issues I do a statistical count of the number of complaints I get each month. While I do not document all of them, I document the ones with merit and that averages 35 or 40 complaints a month. And those are the ones with merit. So the fact of the matter is this, the Hispanic community, the African American community and others need the benefit of a civil rights commission. We need a civil rights commission.⁴⁴

Marcella Garcia, Director of Catholic Charities of Arkansas, Immigration Services

Our agency [Catholic Charities of Arkansas, Immigration Services] is the only nonprofit recognized by the Board of Immigration Appeals to represent low income immigrants in immigration matters before U.S. Citizenship and Immigration Services. In addition to immigration counseling and support, we also provide education to immigrant communities about their rights, and we

⁴⁴ Dale Charles, Little Rock Hearing transcript, pp. 296-310.

advocate [in order] to ensure that immigrants are treated with dignity and respect regardless of their status. If you are an immigrant in Arkansas, the chance of you finding an attorney that is able to take your case is limited.

So the work that we do with immigrants is impacted by a variety of different things; criminal issues, family law issues, and really, the sad thing is that the majority of clients that come to my office, by the time they've come to me something has happened which I cannot undo. And that means that they are denied their possibly one ability to getting their lawful status. And when we see those cases . . . you know, we work very hard with various agencies to refer when appropriate, when we know there are violations. But there are other times where people are just well-meaning but they refuse to help. And immigration is a controversial issue and so while people are entitled to their opinion, where there are these programs where there are these requirements, where students are entitled to have access to their records and they are just being denied, there is no agency that is overseeing this. Racial profiling is a significant challenge for the immigrant community, and ours is not an agency that can speak to racial profiling.

I served on the Racial Profiling Commission and it terminated in June of this year, and so for me the importance of a commission on civil rights in the state is that they would be able to take these areas in which there are big gaps, in which there are communities that are not being represented, and not just collect the data, but have the power to investigate and have that power be separate and apart from the agencies which are being investigated and recommend and be able to provide resolution for these victims because the violations that I see have long, long impacts for these clients that my office serves.⁴⁵

Eric McDaniel, President, Arkansas Stonewall Democratic Caucus

On behalf of Stonewall Democratic Caucus and the larger LGBTQ community of the state, I would like to thank you for the opportunity to speak before you today, specifically in regards to

⁴⁵ Marcella Garcia, Little Rock Hearing transcript, pp. 395-405.

the need for a state civil rights agency on behalf of the LGBT community. One critical component of a state commission would be to capture data on how the public perceives discrimination for all groups, and regardless of whether they are currently protected. That information would be very valuable to the legislature in providing the information on how matters of discrimination should be addressed. This is especially important, and this has been mentioned as well, given the consistent . . . that we consistently have members in most sessions that present legislation that would exclude the LGBT community and others from civil equality.

A state civil rights commission can also assist in implementing federal law. For example, earlier this year the EEOC held that Title VII, the federal law that forbids discrimination on the basis of sex, as well as race, religion, color, and national origin, also forbids discrimination against employees because they are transgender. There are undoubtedly state agencies and commissions and organizations that are unaware of this legal interpretation. With a state civil rights agency, this information could be absorbed in the same agency collecting information from the public on perceived discrimination.

My two last points are matters of economics. Arkansas is a relatively poor state and too many times it is the least of us that suffer the most from discrimination. Without a civil rights agency, people are relegated to hiring private representation which can be very costly. Remedy of discrimination matters should not rely on one's ability to pay. Lastly, some would argue that now is not the time for additional — for adding additional commissions or agencies to the state's budget. However, one could argue that doing so actually makes good economic sense.⁴⁶

Mireya Reith, Director, Arkansas United Community Coalition

A [state] human rights commission that could receive complaints is very important. I think of the individuals coming before you in these hearings [noting] that there is no good data here in Arkansas to really understand the depth and with that poses policy

⁴⁶ Eric McDaniel, Little Rock Hearing transcript, pp. 388-94.

challenges at all levels in terms of finding solutions. [Many] of us have come to the common conclusions that there is a tremendous need and urgency to take action toward a human rights commission here in Arkansas.

In [the Arkansas Advisory Committee's] own report in 2001 there was the finding that a human rights commission would be a value added to our state. It was necessary in our state to have a Fair Housing Commission, but with the exception of the Fair Housing Commission we have not seen any action in terms of opportunities or support in these other areas.

We see as a critical component of this human rights commission being able to be an implementer of what we see as sort of a changing federal civil rights and really being able to help Arkansas benefit from that. With this human rights commission, we really are talking about several different groups in Arkansas, and in some ways all Arkansans especially when you look at that correlation between our lower economic status and Arkansas being a poor state. There are real challenges because of that economic reality that we collectively face. I think what excites us about a state human rights commission is the potential to help lift up our state, our social fabric, the political and democratic quality of our institutions, and our economy as well.⁴⁷

Terry Trevino Richard, League of United Latin American Citizens

There [needs to] be a civil rights agency here in the state of Arkansas; we need one in every state. Arkansas is one of the few states that does not have one. There is no doubt, if we asked the question, 'if there are a significant number of civil rights violations in a state, would it warrant a civil rights commission?' that the answer, of course, is yes. We know the changing face of Arkansas as well as within our nation, and it behooves us to have a civil rights agency here in the state of Arkansas.

There is also a question of whether or not there are enough violations to justify a civil rights agency. And the answer to that is, of course, yes. You know, there have been and what the other panelists have shown is that there are a significant number of violations that are occurring within our state. If such civil rights

⁴⁷ Mireya Reith, Little Rock Hearing transcript, pp. 344-61.

violations have a pattern of being ignored through either malice or lack of education, then there is a need for a civil rights agency.

We are living in an interesting and turbulent time period in the history of the United States. There has been a significant movement to the right in the United States that we have noted over the last 30 years. There has also been a significant movement, which has been noted here in the state of Arkansas, of anti-immigrant groups being developed. There is a distinct targeting of African Americans to join these anti-immigrant groups; using the fear tactics that they are taking away your jobs. So this is a threat that exists within our state. It requires an agency that has the ability to say, no, we are going to represent the rights of these individuals, to prevent these civil rights violations from occurring. And it's not just civil rights.⁴⁸

Randi Romo, Executive Director, Center for Artistic Revolution

It seems to me that, based on what [I have heard], that attorneys self-select and disqualify clients. As was heard, not all [civil rights attorneys are] *pro bono* attorneys. So it seems to me that there is a lot of self-selection and self-deleting of potential cases that may actually have merit. But because they do not seem to be winnable in the foreseeable future or in their timeframe to generate income, that case is put off.

The stated figure to try a [civil rights case] of \$15,000 discourages a client from bringing a case forward. That does not mean that the case does not have merit. It simply means that the [lawyers] are not going to take the case. So I would venture to say that the willingness of the attorneys to take cases in this state (as we feel to be the truth based on the myriad of cases that [my organization] hears every day from people begging for assistance) is that such help just simply is not there.

So I think that it does a disservice to Arkansans across the board if we simply say that there is enough in place. If there was enough in place all of our organizations that have presented testimony these past few days would not be telling you about the volume of cases and discriminatory actions that we hear on a weekly basis. We have kids being pushed out of school. We have people being pushed out of their homes. We have people's children being taken away from them. [Our organization] sees and hears this every day. We see this stuff all the time. They have nowhere to go to take

⁴⁸ Terry Trevino Richard, Little Rock Hearing transcript, pp. 406-27.

their cases for relief. So we do feel very strongly that a [state civil rights] commission is necessary.⁴⁹

Jessica Yamone, Intern, University of Arkansas, Institute on Race and Ethnicity

The last time that a conversation was brokered that had to do with a Civil Rights Agency in Arkansas was in 1991. Arkansas is one of three states that does not have a Civil Rights Agency. Terri Beiner and Mr. Phillip Kaplan, professor and attorney respectively and both experts in their own rights, engaged in a heady debate about the necessity of a Civil Rights Commission.

Professor Beiner brought up three points: (1) most lawyers are hesitant to take on civil rights cases, (2) the 8th Circuit sets out a very inhospitable precedent for plaintiffs, and (3) the creation of a Civil Rights Commission could give litigators the means to further develop the Arkansas Civil Rights Act.

To Professor Beiner's first point, Mr. Kaplan argued that there are plenty of new lawyers who are more competent than lawyers in the past in understanding and filing employment discrimination complaints. He also pointed out that there are electronic databases that any lawyer can access to find model complaints. To Professor Beiner's second point, Mr. Kaplan made the argument that most cases these days are mediated, not litigated and that the EEOC has good mediators. He then surmised that the reason why most of these cases are settled for menial amounts is because plaintiffs were bringing forward claims based on "fairness", an issue that is not litigable. Finally, Mr. Kaplan argued that with the current state of the union, a push for a Civil Rights Commission had no chance of being successful at this point in time.

Among the academics presenting, Professor Adjoa Aiyetoro helped to contextualize some of the data presented to urge the Arkansas Committee to remember that a Civil Rights Commission is necessary because structural racism continues to exist in Arkansas. In my mind, this ties to a point made by Eric McDaniel, President of the Arkansas Stonewall Democrats. Quoting from a speech by former President Clinton to the DNC, Mr. McDaniel reiterated that:

It turns out that advancing equal opportunity and economic empowerment is both morally right and good economics. Why? Because: poverty, discrimination, and ignorance restrict growth.

⁴⁹ Randi Romo, Little Rock Hearing transcript, pp. 482-88.

When you stifle human potential, when you do not invest in new ideas, it does not just cut off the people who are affected, it hurts everyone.

In reflection, this is the point that I feel is the greatest challenge with regards to moving forward. That is, a coalition advocating for the creation of a Civil Rights Commission must be able to lay out a clear and specific strategic plan as to how addressing structural inequality can be the best economically viable route for the state of Arkansas.⁵⁰

⁵⁰ The comments of Ms. Yamane were received as part of public comments.

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FINDINGS

The following conclusions and recommendations made through the U.S. Commission on Civil Rights to state and local officials are submitted in accordance with the provisions of Section 703.2(e) of the Commission's regulations calling upon advisory committees to initiate and forward advice and recommendations to the Commission upon matters which the state committee has studied.

1. Forty-six states and the District of Columbia have in place state agencies that investigate and litigate complaints for areas of discrimination under state laws to include employment, public accommodation, and housing. In Arkansas the one state level civil rights agency, the Arkansas Fair Housing Commission, investigates only housing complaints.
2. In 1993, Governor Jim Guy Tucker signed into law Arkansas' first civil rights legislation, the Arkansas Civil Rights Act of 1993.⁵¹ In 2001 the Arkansas Advisory Committee reported on its study of the issue and recommended that the state legislature of Arkansas amend the Arkansas Civil Rights Act for the purpose of establishing a state civil rights agency with responsibility to address civil rights disputes and issues with the state to include employment and public accommodation.
3. In 2001, the state legislature amended the Arkansas Civil Rights Act with the passage of the Arkansas Fair Housing Act (AFHA).⁵² This act established a state agency, the Arkansas Fair Housing Commission, with authority to investigate fair housing complaints.
4. Except for fair housing complaints, there is no state avenue through which citizens and residents can pursue allegations of discrimination prohibited under federal law.

⁵¹ ARK. CODE. ANN. § 16-123-101.

⁵² Arkansas Fair Housing Act of 1995 (codified at ARK. CODE. ANN. § 16-123-201).

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RECOMMENDATIONS

The Arkansas Advisory Committee recommends to the Commission the following:

1. The governor and state legislature of Arkansas amend The Arkansas Civil Rights Act of 1993 to allow for a state-based agency to investigate and mediate civil rights complaints regarding employment and public accommodation.

The committee holds that such an action would provide an enhanced presence in the state regarding civil rights protections. Such an action would also serve to counter the public image of the state stemming from its unfortunate historical legacy with respect to race relations. In addition, a state-based civil rights commission could serve a non-adversarial role and mediate disputes in a non-confrontational arena and thereby allow for greater timeliness in the resolution of civil rights complaints to the benefit of all parties involved.

2. The establishment of a new state agency is not necessarily the only course of action. The Arkansas Fair Housing Commission was listed in 2011 as one of the best operating fair housing agencies in the nation.

The governor and the state legislature that they might consider expanding the responsibilities of the Arkansas Fair Housing Commission to include jurisdiction over employment and public accommodation issues.⁵³

⁵³ Gregory Kaza was a member of the Arkansas Committee at the time the hearing was conducted in September 2012.

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**Arkansas Advisory Committee to the
U. S. Commission on Civil Rights**



U.S. Commission on Civil Rights Contact

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