

U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, AUGUST 17, 2018

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The Commission convened in Suite 1150 at
1331 Pennsylvania Avenue, Northwest, Washington,
D.C. at 10:00 a.m., Catherine Lhamon, Chair,
presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair*

DEBO P. ADEGBILE, Commissioner*

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner*

DAVID KLADNEY, Commissioner*

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director*

MAUREEN RUDOLPH, General Counsel

* *Present via telephone***NEAL R. GROSS**

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STAFF PRESENT:

MARIK ZAVIER-BRIER

ALFREDA GREENE

PAMELA DUNSTON, CHIEF, ASCD

DAVID MUSSATT, Director, RPCU

WARREN ORR

MICHELE RAMEY

SARALE SEWELL

JUANDA SMITH

BRIAN WALCH

MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

INTERNS PRESENT:

MAIA BROCKBANK

AMY JEANNERET

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P R O C E E D I N G S

(10:01 a.m.)

CHAIR LHAMON: This meeting of the U.S. Commission on Civil Rights comes to order at 10:01 a.m. on August 17, 2018. The meeting takes place at the Commission's headquarters located at 1331 Pennsylvania Avenue, Northwest, Washington, D.C.

I'm Chair Catherine Lhamon. Commissioners who are present at this meeting in addition to me are Commissioner Heriot and Commissioner Narasaki. On the phone, if you could confirm you are on the line after I say your name. I believe we have Vice Chair Timmons-Goodson.

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

CHAIR LHAMON: And Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Thank you. A quorum of the Commissioners is present.

Is the court reporter present?

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1 THE COURT REPORTER: Yes.

2 CHAIR LHAMON: Thank you. Is the Staff
3 Director present?

4 MR. MORALES: I am on the phone, yes.

5 CHAIR LHAMON: Thank you. The meeting now
6 comes to order.

7 Before we proceed with the agenda and our
8 formal business today, I want to take a moment to
9 address the passing of two individuals.

10 First, Dr. Dawn Mabalon who was a
11 professor of history at San Francisco State University
12 until her tragic death a few weeks ago. The
13 Commission had invited Dr. Mabalon to speak today in
14 recognition of her expertise as an accomplished
15 scholar of Filipina/Filipino American history. I
16 regret that we did not have the opportunity to hear
17 from her.

18 Her work to preserve and spread the
19 stories of early Filipina/Filipino Americans helped to
20 enrich and deepen our country's understanding of the
21 American experience. Those contributions will
22 continue to live on as more students of history and
23 civil rights read her work.

24 I understand that Commissioner Narasaki
25 would also like to say a few words.

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1 COMMISSIONER NARASAKI: Yes, thank you,
2 Madam Chair. I would like to add my deepest
3 condolences to the family and the friends of Dr. Dawn
4 Mabalon. Since learning of her passing last week,
5 I've heard an outpouring of grief from the Filipino
6 American community about what a tremendous loss this
7 is to them and to our nation. She was an inspiration
8 to many across the nation.

9 In her book, *Little Manila Is In The*
10 *Heart*, Dawn chronicles the settlement and creation of
11 Little Manila in Stockton, California in the early
12 20th century. She said she sought to rewrite the
13 dominant narrative of Asian American history which has
14 downplayed the Filipina American community building.

15 The title of her book derives from a
16 seminal Asian American novel, *America Is In The Heart*,
17 by the late poet, author, and activist Carlos Bulosan.

18 Dawn believed that early Filipino American
19 immigrants' deep faith in America sustained them
20 through decades of sacrifice and poverty, racial
21 violence, denials of right to immigrate, become
22 citizens, and to marry whom they wish, and labor
23 repression.

24 Her documentation of the stories of early
25 Filipino immigrants are important because Filipino

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1 Americans have played a critical but largely forgotten
2 role in American history. I was very much looking
3 forward to hearing her share this history, and I hope
4 the Commission will be able to revisit this topic in
5 the future.

6 Thank you.

7 CHAIR LHAMON: Thank you.

8 Next, I want to address the passing of a
9 member of the Commission's Georgia Advisory Committee,
10 Justin Pressley.

11 Justin had served as a member of the
12 Georgia State Advisory Committee since 2011, serving
13 for the last seven years. Justin was clearly
14 dedicated, personally and professionally, to the
15 disability rights movement and ensuring independent
16 and integrated space for people with disabilities.
17 His years of service benefitted all of us, and we are
18 grateful for the time and energy he devoted to this
19 civil rights cause and so many others.

20 The Commission sends our condolences to
21 the families of Justin Pressley and Dr. Dawn Mabalon.

22 Now, we'll move to approval of our agenda.

23 **I. APPROVAL OF AGENDA**

24 CHAIR LHAMON: Is there a motion to
25 approve the agenda for this business meeting?

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1 COMMISSIONER NARASAKI: I so move.

2 CHAIR LHAMON: Thank you. Is there a
3 second?

4 COMMISSIONER HERIOT: Second.

5 CHAIR LHAMON: Thank you. Let's start
6 with a couple of amendments. I move to amend to take
7 down the discussions and votes on program planning for
8 FY 2019 and 2020 as well as the presentation provided
9 for Dr. Mabalon. Is there a second?

10 COMMISSIONER NARASAKI: I second.

11 CHAIR LHAMON: Thank you. Any other
12 amendments?

13 COMMISSIONER YAKI: Madam Chair,
14 Commissioner Yaki.

15 CHAIR LHAMON: Go ahead, Commissioner
16 Yaki.

17 COMMISSIONER YAKI: Yes, Madam Chair. I
18 move to amend the agenda to include a discussion and
19 vote on the Stand Your Ground report.

20 CHAIR LHAMON: Thank you. Is there a
21 second?

22 COMMISSIONER NARASAKI: I second.

23 CHAIR LHAMON: Thank you. Any other
24 amendments? If there are no further amendments, let's
25 vote to approve the agenda as amended. All those in

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1 favor, say aye.

2 (Chorus of aye.)

3 CHAIR LHAMON: Any opposed? Any
4 abstentions? The motion passes unanimously.

5 We'll hear now from our Maine Advisory
6 Committee Chair Diane Khiel on the Committee's
7 recently released report, Voting Rights in Maine.

8 CHAIR LHAMON: Chair Khiel, you have ten minutes
9 to present to us.

10 MS. KHIEL: Madam Chair and Commissioners
11 --

12 (Telephonic interference.)

13 CHAIR LHAMON: Chair Khiel, I'm sorry.
14 You're breaking up.

15 (Telephonic interference.)

16 CHAIR LHAMON: Chair Khiel, you're
17 breaking up. Why don't we go to our other presenter
18 at the moment and see if we can find a better line for
19 you.

20 MS. KHIEL: Okay. Thank you.

21 CHAIR LHAMON: Thank you. So next, we'll
22 hear a presentation from our Arizona Advisory
23 Committee Chair, Lorena Van Assche, on the Committee's
24 recently released advisory memorandum, Voting Rights
25 in Arizona.

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1 **II. BUSINESS MEETING**

2 **PRESENTATION BY ARIZONA ADVISORY COMMITTEE CHAIR ON**
3 **THE COMMITTEE'S RECENTLY RELEASED REPORT,**
4 **VOTING RIGHTS IN ARIZONA**

5 CHAIR LHAMON: Chair Van Assche, are you
6 available?

7 MS. VAN ASSCHE: I am. Good morning,
8 Chairperson.

9 CHAIR LHAMON: Good morning.

10 MS. VAN ASSCHE: Arizona this year took
11 upon to examine potential barriers to voting that may
12 have a discriminatory impact on voters based on race,
13 color, sex, disability status, and national origin.
14 And its intent was to supplement the U.S. Commission
15 on Civil Rights 2018 statutory enforcement report.

16 We gathered information from a public
17 meeting that we held earlier this year on March 9th
18 held in Phoenix and testimony that was submitted to
19 the Committee in writing as well as testimony that was
20 received during the January 11, 2018 meeting of the
21 Native American Voting Rights Coalition.

22 We submitted a memo. And our memo, of
23 course, that you have and I know you have read, has
24 focused on four areas, potential barriers to voting in
25 the areas of language access, bifurcated voter

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1 registration system, voter ID law, and restriction on
2 mail-in ballots.

3 We also took a look at the impact of
4 Shelby County v. Holder decision, specifically
5 regarding access to polling location. And the
6 findings that we found with regard to the impact of
7 Shelby with polling locations were quite interesting.

8 Arizona, after the 2016 election, made
9 national headlines for having very long lines. And
10 one of the reasons for that was that Arizona had
11 closed over 70 percent of its voting locations
12 compared to the prior 2012 election. Those closures
13 were justified by voting -- by the Maricopa -- and
14 this is in Maricopa County. I'm sorry if I said
15 Arizona. It's Maricopa County.

16 Maricopa County elections director advised
17 -- or county recorder, I'm sorry -- advised that the
18 reason for that was that there had been a declining
19 interest in voting in person given the mail-in voting
20 ballots that are available in Maricopa County, the
21 cost of maintaining those polling locations, and the
22 lack of interest of poll workers at those locations.

23 But what we heard from the community,
24 specifically, the voters with disabilities, were that
25 those lines were especially impactful for them because

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1 many of them rely on what we call in Arizona, Dial-a-
2 Ride. It's a public assistance ride. And those rides
3 will not wait for their riders for an indefinite
4 amount of time. So a lot of these voters with
5 disabilities would go to these locations that had
6 excessive lines and had to walk away -- I'm sorry --
7 had to leave because they didn't have the time to
8 stand and wait in those lines.

9 The voters with disabilities also made a
10 significant showing at our public hearing on March 9th
11 and expressed a concern with the lack of the poll
12 workers' knowledge of the voting machines. A lot of
13 the poll workers didn't know how to turn on the
14 machines. They didn't know what features they had to
15 -- for the voters with disabilities. And so again,
16 the voters with disabilities had, many times, if they
17 couldn't wait for the poll workers to figure out how
18 to turn on the machine or how to give them the access
19 to the voting machine, they would have to just leave.

20 The Shelby County case also had an impact
21 on language access. There are counties in Arizona
22 that lost 203 coverage, but one of the positive
23 findings that we heard at our meeting is that despite
24 not receiving that coverage, they continued to receive
25 language access. And the voter experts encouraged

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1 these communities.

2 And specifically in Arizona, we have a lot
3 of Native Americans who have language other than
4 English. But they are encouraged to maintain
5 collaboration with county officials. And even though
6 these certain counties weren't required to have
7 language access, they continued to do so during the
8 2016 election. So that was a very positive finding
9 for us.

10 The other impact that Shelby County v
11 Holder had in Arizona, which was very significant and
12 a subject of ongoing litigation, is the ballot
13 collection law. So in Arizona, after Shelby County v
14 Holder, Arizona voters passed a law that made it a
15 felony for individuals to collect and turn in
16 another's ballot. And this had an impact on voters,
17 especially in counties with a lot of Native Americans
18 who are very far away from their polling location and
19 who, based on testimony, would rely on friends or
20 other organizations that would collect their completed
21 ballots and turn it in for them.

22 In March of 2016, before the election,
23 Arizona voters made it a felony for individuals to
24 collect and turn in others' ballots. They excluded,
25 however, household members, family members, or

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1 caregivers. The group filed for an injunction to
2 prevent the ban from going into effect before the
3 election. The district court in Arizona did not grant
4 the injunction. The 9th Circuit granted it and found
5 that it was unlikely that the Justice Department would
6 have granted those pre-clearances had the protections
7 of Shelby County been in effect.

8 However, just recently in May of this
9 year, the Arizona District Court issued an order
10 upholding the ban on collection. And in doing so, it
11 had surveyed voters affected by the ban and concluded
12 that the law did not have a sufficiently negative
13 impact on voters statewide to raise sufficient
14 concern. That is an issue. Immediately it was
15 appealed. So it is up for appeal.

16 But those are really the three significant
17 impacts that we found based on the testimony, written
18 testimony, and the Native American hearing that was
19 held on how Shelby County v. Holder impacted Arizona.

20 In addition to that, one of the issues
21 that we also took testimony on and looked at was
22 Arizona's bifurcated voter ID laws. Arizona, in 2004,
23 submitted -- approved what is called Proposition 200.

24 And what that sought to do is to require proof of
25 citizenship for all voter registration forms.

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1 The U.S. Supreme Court in 2016 denied that
2 requirement. And so what Arizona did as a result is
3 it created a dual registration system so that voters
4 could register for the federal election, did not
5 require at the time of registration proof of
6 citizenship. But if they wanted to register to vote
7 in the state of Arizona, proof of citizenship was
8 required.

9 And what we found was that this dual
10 bifurcated system has created a lot of confusion with
11 voters who believe that they are registering to vote
12 for all elections and come to find out they only
13 registered to vote for the federal election and not
14 for the Arizona statewide election.

15 That law also was subject to litigation in
16 a lawsuit that was initiated in November 2017. That
17 law also recently settled, and it settled after our
18 report was submitted. So the settlement is not found
19 -- contained in this report. But the lawsuit that was
20 referenced in the report is in footnote 47. And we,
21 as a Committee, did not have an opportunity to review
22 that, of course. But I did want to raise that update
23 to the Commission.

24 The recommendations that we received from
25 the county recorder in response to the concerns about

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1 long wait lines was that Maricopa County -- and again,
2 this is Maricopa County which is the largest county in
3 Arizona that had those headline-making, five-hour wait
4 lines. The suggestion that -- or recommendation that
5 they made is that Maricopa County move to vote center
6 models where instead of going to mandatory polling
7 locations, voters would be allowed to go to the
8 location of their choice.

9 There are two counties in Arizona where we
10 have that out of the 15 counties. And that is a move
11 that the county recorder believes would remedy a lot
12 of the issues of voters being turned away because they
13 went to the wrong voting location. And also that
14 would remedy the long wait lines that we saw in 2016.

15 CHAIR LHAMON: Ms. Van Assche, thank you
16 so much for your presentation about the report. I
17 want to open it up for -- about the advisory
18 memorandum, I'd like to open it up for questions and
19 comments from my fellow Commissioners.

20 Commissioner Narasaki?

21 COMMISSIONER NARASAKI: Thank you, Madam
22 Chair. I want to thank the Arizona State Advisory
23 Committee and Chair for doing this extensive report.
24 Arizona has been sort of ground zero in the Southwest
25 for issues around voting.

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1 I was very interested because Arizona does
2 have such a significant Native American population and
3 the findings around that community. And one of them
4 struck me that Native American voters reported that
5 when they went to the polls to vote, they learned that
6 they were dropped from registration rolls but had
7 received no notification explaining the reason for
8 being dropped. And then they were unable to vote
9 because of the deadline for registration is 30 days
10 prior to the Election Day.

11 Do you know whether the state is doing
12 anything to look into that problem? And I know some
13 of it is often caused because of the remoteness of
14 Native American reservations and the issues they have
15 with being able to receive mail.

16 MS. VAN ASSCHE: Yes, you highlighted a
17 number of issues that our Native American community
18 has. But to answer your question, I don't know what
19 remedies are being placed to -- so that doesn't happen
20 again. I believe that information was gathered from
21 the Native American meeting that was held in January.

22 So although we do have a transcript, it wasn't at our
23 public meeting.

24 But we did highlight two things that the
25 Native American community has unique issues with, and

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1 those are addresses on the forms. The forms that we
2 have in Arizona require a physical address form. And
3 the addresses that Native American communities have
4 don't necessarily comply with the traditional address
5 that we would see on other forms. And so they
6 struggle with providing an address that the county
7 officials find in compliance.

8 And so that, I know, is an issue that has
9 been raised, and it was raised at our public meeting.

10 Unfortunately, I don't know what is being done to
11 address that.

12 The other item that I think you addressed
13 is language access. And Arizona is unique in that it
14 has multiple Native American communities that have a
15 language other than English. And so although not
16 required, based on the testimony we received, it
17 appears that county officials are still working with
18 providing language in their native language so that
19 they have help in registering to vote and in actually
20 voting.

21 COMMISSIONER NARASAKI: I'd note that also
22 your report highlighted the fact that under the
23 National Voter Registration Act, states are required
24 to provide registration opportunities at the DMV and
25 also at the state agencies. And it seems that Native

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1 Americans also were not being asked 100 percent of the
2 time at either place to register. So I was also
3 interested in whether there's any follow up on that
4 issue.

5 MS. VAN ASSCHE: Yes, that was something
6 that we found. And as far as follow up, I don't know
7 beyond highlighting that that was a concern and
8 something that did happen. I don't know what is being
9 done to remedy that also.

10 COMMISSIONER NARASAKI: Great. And I just
11 have one final question. In your recommendations, you
12 asked our Commission to send this advisory memo and
13 make recommendations to DOJ. And one of them says,
14 appropriate the nearly \$320 million already allocated
15 to counties to election assistance. And I'm wondering
16 -- I'm not quite sure what that means. Does that mean
17 that the state has \$320 million that it's sitting on?

18 MS. VAN ASSCHE: That was a recommendation
19 that we heard from a county recorder in response to
20 the lack of or the aging of the voting machines. And
21 so what he advised us is that there was this \$320
22 million allocated to counties. I believe that's a
23 federal amount. I don't think that that's money that
24 we're sitting on in the state, but I'm not exactly
25 sure.

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1 COMMISSIONER NARASAKI: Okay. If you
2 could get clarification since you're asking us to --

3 MS. VAN ASSCHE: Absolutely.

4 COMMISSIONER NARASAKI: -- approach DOJ
5 that would be helpful. Thank you.

6 CHAIR LHAMON: Questions from other --

7 MS. VAN ASSCHE: Absolutely. Thank you.

8 CHAIR LHAMON: Thank you. Questions from
9 other Commissioners? While waiting, I will say, Chair
10 Van Assche, I really appreciated the --

11 COMMISSIONER ADEGBILE: Madam Chair?

12 CHAIR LHAMON: I'll just finish my thought
13 and then come to you next, Commissioner Adegbile.
14 Perfect, thank you.

15 COMMISSIONER ADEGBILE: Sure, sure.

16 CHAIR LHAMON: Chair Van Assche, I really
17 appreciated the inclusion of the bright spot about
18 language access in the report and also in your
19 presentation. It was really exciting to read and to
20 hear that multiple counties in Arizona are continuing
21 to provide language access supports, even though
22 during the 2016 elections, they did not meet the
23 Federal Section 203 covered language criteria. So
24 that was an unusual bright spot and certainly very
25 pleasant to get to read.

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1 I also wanted to ask you, in the
2 recommendations for the advisory memorandum, you
3 suggest that the Arizona state legislature eliminate
4 the requirement that felons pay fines and fees in
5 order to restore their voting rights. And I wondered
6 if my fellow Commissioners would have any objection to
7 our attaching the Commission's fines and fees report
8 when we send your recommendations to the Arizona state
9 legislature. So just curious if any of my fellow
10 Commissioners have concerns about that.

11 (Simultaneous speaking.)

12 VICE CHAIR TIMMONS-GOODSON: Madam Chair,
13 this is Vice Chair Timmons-Goodson. I think that's a
14 wonderful idea.

15 CHAIR LHAMON: Thank you. Hearing no
16 objection, I think we will do that.

17 Commissioner Adegbile?

18 COMMISSIONER ADEGBILE: Thank you. I want
19 to join my fellow Commissioners in thanking you for
20 the fine work and for your report this morning.
21 Please carry our thanks to the entire Committee.

22 I had a question about the reasons that
23 the Maricopa registrar used or offered for eliminating
24 polling places. I think you said that two of the
25 reasons were that more voters preferred to mail in

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1 their ballots. And then another one was that there
2 was a lack of interest in people serving as poll
3 workers. Is that -- did I that capture two of the
4 reasons you offered?

5 MS. VAN ASSCHE: Yes, those were two of
6 the reasons I offered. And I know he offered more, if
7 you'd like to hear: cost pressures associated with
8 maintaining the location and the voting equipment and
9 the less locations willing to serve as polling
10 locations because of increased liability, lack of
11 security, lack of compliance with the ADA, and
12 insurance concerns.

13 COMMISSIONER ADEGBILE: And the reduction
14 in polling places was -- did you say it was 70
15 percent?

16 MS. VAN ASSCHE: Yes, it was 70 percent
17 compared to the 2012 election, and it was 85 percent
18 reduction compared to the 2008 election.

19 COMMISSIONER ADEGBILE: So I guess I have
20 two questions. One is, what evidence did Maricopa
21 County offer in support of these purported
22 justifications for such a drastic reduction? And in
23 particular, was there any evidence that the challenges
24 in these areas had become drastically more in the
25 course of the last four years than they had been

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1 previously?

2 MS. VAN ASSCHE: The evidence that they
3 provided was only their testimony, nothing in addition
4 to that. And I'm sorry. Your second question was
5 what?

6 COMMISSIONER ADEGBILE: Yes, so I guess to
7 my mind that a 70 percent reduction in polling places
8 in the most populous county, as you said, in the state
9 is a rather drastic change in voting access. And so
10 my thought is that there would've had to have been a
11 rather precipitous and drastic change in the ability
12 of the county to provide access to polling places that
13 had any chance of backing up the purported
14 justification.

15 And so I'm just wondering what type of
16 studies they had conducted, what type of poll worker
17 outreach they had tried and had demonstrated to have
18 failed. Was there anything like that, or was it just
19 simply on their say-so, which, of course, would be a
20 thin reed on which to hang such a drastic reduction in
21 access to polling places?

22 MS. VAN ASSCHE: No studies were offered
23 to the Committee to substantiate the reasons that they
24 offered. That's not to say that they don't have
25 studies that substantiated those reasons. But as far

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1 as the Committee is concerned, the only thing that
2 they offered the Committee as reasons for the
3 reduction was their testimony that these were the
4 factors that precipitated that action.

5 COMMISSIONER ADEGBILE: Okay. And
6 presumably, if they had studies, they might've
7 included them with their testimony.

8 I want to ask one more question, and you
9 noted that because of the timing of the settlement, it
10 was not -- and here, I'm speaking about the settlement
11 with respect to dual registration requirements,
12 breaking up the state registration requirement from
13 the federal registration requirement. There have been
14 cases on these issues, voting rights cases in earlier
15 periods. And in particular, there's a Mississippi
16 case.

17 But one of the things that I'm wondering
18 about this is even though the report did not treat the
19 settlement because of its timing, do you know anything
20 about the terms of the settlement?

21 MS. VAN ASSCHE: I did read over the
22 order. It's a 20-page order that is approving the
23 settlement. So it is a publically available document.

24 However, I know as a general idea that the plaintiff
25 in the action, which was LULAC, the League of United

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1 Latin American Citizens of Arizona, appeared to have
2 settled with favorable terms as to them.

3 So what they were seeking was favorable to
4 them. But specifically, I don't know what the terms
5 of the settlement are. I don't know what the walkaway
6 terms are, if the forms are going to change or
7 specifically if citizenship is still going to be an
8 issue.

9 COMMISSIONER ADEGBILE: Okay. Well, thank
10 you again for your hard work and your presentation
11 today. It was very informative and certainly adds to
12 our examination of voting access nationwide. Thank
13 you so much.

14 MS. VAN ASSCHE: Thank you.

15 CHAIR LHAMON: Chair Van Assche, thank you
16 very much for your leadership on the Arizona State
17 Advisory Committee, and thank you to you and to all of
18 the Committee members for the work on this report.

19 With that, I think we'll try again with
20 the Chair of our Maine State Advisory Committee.

21 **PRESENTATION BY MAINE ADVISORY COMMITTEE CHAIR ON**
22 **THE COMMITTEE'S RECENTLY RELEASED REPORT,**
23 **VOTING RIGHTS IN MAINE**

24 CHAIR LHAMON: Ms. Khiel, let's see if we
25 can hear you better this time.

1 MS. KHIEL: Okay. I will try, and please
2 stop me if you can't.

3 CHAIR LHAMON: Terrific. We can hear you
4 well.

5 MS. KHIEL: Is that better?

6 CHAIR LHAMON: Yes, thank you very much.

7 MS. KHIEL: Okay, good. Good morning,
8 Chair and Commissioners. Thank you for inviting me to
9 present highlights from the Maine Advisory Committee's
10 Voting Rights Report and to provide additional
11 information since our report was issued.

12 But first, I'd like to thank our advisor,
13 Barbara de La Viez, who oversees ten state advisory
14 committees, for her tireless guidance and support. I
15 don't know how she does it, but I do know that we
16 would not be as productive as we are without her. We
17 have a great collaboration.

18 In addition, the Committee greatly
19 appreciates the contributions of intern Elizabeth
20 Boyle who helped with research in drafting sections of
21 this report.

22 The Committee is currently working on its
23 project on the criminalization of people with mental
24 illnesses and hopes to have a report ready soon. But
25 when it learned that the Commission's statutory report

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1 was on voting rights, it saw an opportunity to
2 contribute to the work of headquarters. So we voted
3 to pause our work on that project and pour our energy
4 into supporting the valuable work of the Commission.

5 This was particularly timely for two
6 reasons. First, Matt Dunlap, the Maine Secretary of
7 State, was on the Voting Rights Commission formed by
8 President Trump and has filed a lawsuit challenging
9 the openness of that work. That Commission has since
10 been disbanded. The documents that Secretary Dunlap
11 sought are now available, and they demonstrate that
12 there is no evidence of voter fraud.

13 Second, there were some attempts,
14 considered blatant by the Committee, to suppress the
15 vote in Maine particularly of students. For these
16 reasons, the Committee voted in February to have the
17 briefing and managed to put it together one month
18 later in March of this year. It included
19 participation by the Maine Secretary of State and
20 outstanding presentations by the ACLU, the League of
21 Women Voters, and Disability Rights Maine.

22 Not only was the advisory committee able
23 to do the briefing, but it was also able to finish and
24 vote on a report four weeks later. Which leads me to
25 the report. Because the Commissioners have read the

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1 report, I will only highlight some of the important
2 points.

3 First, we learned that Maine has a
4 statutory, regulatory, and community commitment to
5 participation in elections. We have some of the most
6 inclusive and protective voting laws in the country,
7 making Maine one of the most democratic states in the
8 United States. Our residents may register to vote on
9 Election Day. There is no photo ID requirement, and
10 those convicted of crimes are not deprived of their
11 right to vote. Maine serves as a model for the
12 Commission and the rest of the country for recognizing
13 the value of the fundamental right to vote.

14 Moreover, in our June 2018 primary, Maine
15 implemented the first ever statewide ranked choice
16 voting for gubernatorial and federal candidates. That
17 said, we also learned that despite this commitment to
18 broad participation, there are remarkable but
19 predictable attempts to prevent eligible voters from
20 exercising that important right.

21 While we note in our report that voter
22 suppression takes the form of both legislative and
23 official government action, today I want to focus on
24 suppression by official government action,
25 particularly highlighting what happened in 2016 and

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1 2018 at Bates College which is located in our second
2 largest city of Lewiston.

3 Through the testimony of Secretary Dunlap,
4 we learned that on the Saturday before the November
5 2016 presidential election, an anonymous orange flyer
6 was left in several student dorms and in the campus
7 dining hall on the Bates College campus.

8 The flyer, a copy of which the Committee
9 obtained, was entitled Bates Election Legal Advisory,
10 on bright orange paper and warned that if you choose
11 to register and vote in Lewiston, then you must pay,
12 in bold letters, to change your driver's license to
13 Lewiston within 30 days and pay, bold again, to re-
14 register any vehicle you have in Lewiston and have it
15 inspected. And then, I quote, usually, this would be
16 hundreds of dollars in total.

17 Then you may recall in our report at
18 Appendix 2, Secretary Dunlap also provided our
19 Committee with a copy of a misleading letter that the
20 Mayor of Lewiston had sent out to newly registered
21 voters, primarily students, in February of 2018. What
22 you don't see in the report but what is included in
23 the briefing transcripts is testimony that came at the
24 public remark segment from Bates College student Max
25 Gardner.

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1 He came forward to testify about the
2 impact that the mayor's letter had on him and his
3 fellow students, how it confused them, instilled fear
4 of criminal prosecution and of financial penalties and
5 critically how it kept students away from the polls.
6 Mr. Gardner's passionate remarks demonstrated how the
7 spreading of false information, particularly when
8 there's little time to clear up misunderstandings so
9 close to an election, had a major negative impact on
10 student voting. This is a perfect example of
11 suppression by official government action.

12 The Committee was pleasantly surprised to
13 learn just two weeks ago that there's now a bill
14 before the United States Congress that actually refers
15 to the 2016 effort to keep Bates College students away
16 from the polls. This bill would make it a federal
17 crime to knowingly and intentionally spread false
18 information to try to keep people from voting.

19 The penalty included in the bill,
20 submitted by U.S. Senator Claire McCaskill, a Democrat
21 from Missouri, for engaging in deceptive acts includes
22 a fine of up to \$100,000 and as many as five years in
23 prison. The proposal, which is being introduced in
24 both the House and the Senate, called casting a ballot
25 for one's preferred candidate, "a fundamental right".

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1 The purpose behind this bill is to
2 prohibit and to punish any suppression of the vote,
3 including, and I quote, the dissemination of false or
4 misleading information meant to prevent voters from
5 casting their ballots, undermine the electoral
6 process, or intimidate the electorate, end quote.

7 Among the actions that concern the bill's
8 sponsors are any intentional efforts to spread false
9 information about polling places, the time of
10 elections, and the necessity of various forms of
11 identification. Presumably, this law would cover
12 instances like in Maine where voting was made to sound
13 as if it were contingent upon compliance with motor
14 vehicle or other laws.

15 When asked for comments on this proposed
16 federal bill, Maine's Secretary Dunlap responded that
17 he's even had reports from students attending another
18 of Maine's campuses, the University of Maine's
19 flagship Orono campus, who were told that they would
20 be jeopardizing their financial aid packages by virtue
21 of registering to vote and changing their residency,
22 which is blatantly false.

23 The legislation is called the Deceptive
24 Practices and Voter Intimidation Prevention Act. In
25 conversations with my fellow committee members, there

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1 seems to be consensus that the current bills before
2 Congress that strengthen the integrity of our voting
3 system and ensure the public confidence in our
4 elections are critical and go to the very reason the
5 Commission on Civil Rights was founded. The Committee
6 also believes that the fundamental right to vote
7 should not be impeded or burdened by legislative or
8 any government or private action.

9 Thank you very much for allowing me to
10 report on behalf of the Maine Advisory Committee.

11 CHAIR LHAMON: Thank you, Chair Khiel.
12 I'll open for questions from my fellow Commissioners.

13 While folks are thinking, I'll start off with some of
14 my own.

15 I, one, want to thank you and your
16 Committee for your incredibly prolific work in the
17 time that I've been here. So I appreciate your
18 jumping in on this topic because it's valuable to us
19 for the Commission's reporting on voting rights and
20 also was very grateful to be with you for the briefing
21 that you all held on the criminalization of mental
22 illness and look forward to that report as well.

23 From this report, I was really struck --

24 MS. KHIEL: Yes, thank you.

25 CHAIR LHAMON: Sure. I was really struck

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1 by the contrast between what the report says and what
2 you said about the inclusive state laws in Maine for
3 voters, and the explicit racialized threat to voters
4 from the Republican Party Chair in recent years, and
5 also the inaccess for persons with disabilities with
6 respect to the right to vote, and the repeat targeting
7 of college students as recently as this year to limit
8 their right to vote.

9 And I wonder if you, I wonder if the
10 Committee have views about the ways that the inclusive
11 state laws with respect to voting contrast with those
12 very stark limitations on access to franchise for some
13 people in Maine.

14 MS. KHIEL: Regarding the voter
15 suppression, it seems as though -- and which I
16 emphasize that it happens always on the eve of the
17 election. The week leading up or on the eve, it
18 happens at the last minute where confused students or
19 others can't challenge what's being said. So that's a
20 problem.

21 And we may have all the laws under the sun
22 to protect voters' rights. But when these actions are
23 taken at the last minute, it makes it very difficult
24 to try to educate people and to bring them to the
25 polls and especially with students who are busy and

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1 who want to do the right thing but they're afraid of
2 putting their financial aid in jeopardy or otherwise
3 they're getting in trouble with the law by virtue of
4 voting.

5 So it's a problem that I don't know
6 whether this new federal law might address. But
7 certainly, it sounds like it's exactly what we need
8 here in Maine.

9 There is great cooperation regarding the
10 disability -- the access to the polls. There's a
11 great collaboration between the Disability Rights
12 Maine organization and the Secretary of State's
13 office. And they're trying to break down the physical
14 barriers as well as other barriers related to the
15 training of poll workers. Poll workers that don't
16 realize that persons who have disabilities can come in
17 and bring somebody in to help assist them to vote and
18 don't realize that they cannot ask or challenge
19 somebody based on guardianship status.

20 So there are forces that work against
21 these impediments, but it's certainly not perfect.

22 CHAIR LHAMON: Thank you. I do also just
23 want to highlight the jaw dropping nature of the
24 racialized threat that is included in the memo, that
25 this is page 11 of your memo. And it refers to the

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1 2012 Republican Party Chair who was the chair at the
2 time noting that there were dozens, dozens of black
3 people who came in and voted on Election Day. And I
4 will say that I found that so striking that I went to
5 look up what had actually happened because it seemed
6 almost implausible to me.

7 And when I reviewed it in news reports, I
8 learned that it reads as, in fact, worse than you
9 charitably put it in your advisory memorandum, that,
10 in fact, the chair went on TV and said that in some
11 parts of rural Maine, there were dozens, dozens of
12 black people who came in and voted on election day.
13 And he noted everybody has the right to vote -- these
14 are quotes, everybody has the right to vote, but
15 nobody in town knows anybody that's black.

16 That also really struck me. And then I
17 went on to read that he noted that, nobody in town
18 knows anybody that's black. And he was referring to
19 multiple towns. So it's hard to imagine that he
20 actually knows that nobody in town knows whether
21 somebody is or is not black in multiple towns.

22 He subsequently apologized, which I
23 appreciate. But that is just an astonishing,
24 astonishing way to frame and otherwise --

25 MS. KHIEL: Yes.

1 CHAIR LHAMON: -- people who live in Maine
2 --

3 MS. KHIEL: Yes, we found --

4 CHAIR LHAMON: -- have the right to vote
5 and should be able to be respected as voters as
6 recently as this century. So I am sorry it happened.
7 I'm very grateful that your Committee reported on it,
8 and I just -- I found it stunning.

9 So I will pause there. Commissioner
10 Narasaki?

11 COMMISSIONER NARASAKI: Thank you for your
12 report. It's refreshing to hear about a state who's
13 actually focusing on trying to make sure that everyone
14 who is eligible to vote actually has an opportunity to
15 cast their vote and is encouraging people to vote. So
16 it sounds like it's wonderful to live in Maine,
17 unless, of course, you're a student.

18 CHAIR LHAMON: Or one of those black
19 people from the report.

20 COMMISSIONER NARASAKI: Or one of the
21 black people.

22 But one of the experiments that you're
23 doing I think is fascinating which is your foray into
24 ranked choice voting which is also happening in
25 several cities in California as a way to try to lessen

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1 the political divide and improve the discourse in
2 elections and hopefully have better results at the end
3 of the day. And I'm wondering how the experiment
4 went, if you happen to have some thoughts about that.

5 MS. KHIEL: As stated in the report, we
6 used it for the June primaries for the gubernatorial
7 and the federal election. And I thought personally
8 that it went quite smoothly. The reaction was it's
9 kind of strange that you don't have a result on the
10 same day as Election Day. Now, we're used to having
11 the results late on the night of an election.

12 But in both instances with our primary
13 candidate and our federal candidate for U.S. Congress,
14 we had to wait about a week for the results. So
15 first, it was announced who got first, second, third,
16 fourth, and fifth. And then when it was realized that
17 the top candidate didn't have a majority of the votes,
18 that is, over 50 percent, then the bottom vote getter
19 was eliminated and her votes were distributed amongst
20 the remaining candidates until -- and that keeps going
21 until somebody gets the majority of the votes over 50
22 percent.

23 So in both cases, our federal candidate
24 and our gubernatorial on the Democrat side, we had to
25 wait about a week. So it was kind of, like, anti-

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1 climactic. But I think it was worth it for all the
2 reasons that you just mentioned.

3 The state is still working to try to
4 smooth out. We have a clash with the Maine
5 Constitution in that it requires a plurality for a
6 winner in a statewide vote. And that's why this
7 conflicts by saying that it requires a majority. So
8 the goal is to now amend the Constitution so that all
9 elections can use ranked choice voting.

10 CHAIR LHAMON: Thank you. I want to see
11 if my fellow Commissioners who are on the phone have
12 questions.

13 COMMISSIONER KLADNEY: Yes, Madam Chair.
14 This is Dave Kladney. I was wondering if --

15 (Telephonic interference.)

16 CHAIR LHAMON: Commissioner Kladney, we're
17 having trouble hearing you. Can you speak closer to
18 your phone?

19 (Simultaneous speaking.)

20 COMMISSIONER KLADNEY: Can you hear me
21 now?

22 CHAIR LHAMON: Yes, now we can.

23 MS. KHIEL: I can now.

24 COMMISSIONER KLADNEY: Okay. Thank you.
25 Maine is one of two states, I think, in the country

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1 that allows prisoners to vote. And I was wondering if
2 the Committee did any work on that or if you have any
3 information as to how that functions and how much
4 participation there is.

5 MS. KHIEL: We had testimony from the
6 NAACP of Maine who goes into the prison and actually
7 has voter registration and voter education drives in
8 the Maine state prison as well as the one in southern
9 Maine. And so there's that organization. It works in
10 collaboration with the Secretary of State to go in and
11 educate voters. And it works very smoothly, and it's
12 something that hopefully will never change.

13 There was an issue this year where
14 apparently the NAACP however wasn't able to go into
15 the prison. And that was something that came to the
16 Committee's attention after our report -- after our
17 briefing that this year that the NAACP was not allowed
18 to go in and present their program in time for the
19 June primaries. And I think that they're still trying
20 to pursue the -- going to the prisons before the
21 general election.

22 COMMISSIONER KLADNEY: Was there a reason
23 given by the Administration for that?

24 MS. KHIEL: It was very vague. What we
25 heard through the grapevine, the Committee, that is,

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1 was that there was new legal staff in the Governor's
2 Office and they wanted to explore the issue more.
3 That's all that we know. And it sounds suspect, but
4 hopefully they'll be able to get back in and continue
5 with these programs that have gone on for the last ten
6 years.

7 COMMISSIONER KLADNEY: Thank you very
8 much.

9 CHAIR LHAMON: It sounded like there may
10 have been --

11 MS. KHIEL: Thank you.

12 CHAIR LHAMON: -- another Commissioner who
13 also had a question.

14 COMMISSIONER ADEGBILE: Yes, Madam Chair.
15 This is Commissioner Adegbile. It's more in the
16 nature of a comment than a question. But I just
17 wanted to underscore that on page 15 of your report,
18 you explain a little bit about how same-day
19 registration has expanded participation and the impact
20 that it's had on Maine's consistently high voter
21 participation levels across the 50 states.

22 And I just think it's noteworthy to
23 underscore that in the last five days before the
24 election, your report said, as I read it, that in the
25 2008 presidential election, almost 56,000 voters

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1 registered in that final five-day period. And in
2 2010, it was over 19,000 voters that registered in
3 that period. And I just think that those numbers
4 point to ways in which our voting system can be
5 structured to enhance voter participation rather than
6 to put up barriers to participation.

7 So I compliment Maine's example, and I
8 thank you for underscoring it, which is a positive
9 story, even as we face the story about the impediments
10 that are being put in the way of students.

11 MS. KHIEL: Thank you.

12 CHAIR LHAMON: Chair Khiel, thank you
13 again for your leadership on the Maine State Advisory
14 Committee and for taking the time to speak with us
15 today and your patience with us because we couldn't
16 hear you the first time. So for coming back, we
17 really appreciate it.

18 MS. KHIEL: Thank you for your support.

19 CHAIR LHAMON: Terrific. So we'll next
20 turn to a discussion and vote on the Commission's
21 report titled, Police Use of Force and Examination of
22 Modern Policing Practices.

23 **DISCUSSION AND VOTE ON COMMISSION REPORT**

24 **AN EXAMINATION OF EXCESSIVE FORCE AND**

25 **MODERN POLICING PRACTICES**

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1 CHAIR LHAMON: We'll hold two votes.
2 First, we'll consider the report, and second, we'll
3 consider the findings and recommendations.

4 To open the floor for discussion, is there
5 a motion?

6 COMMISSIONER NARASAKI: So moved.

7 COMMISSIONER KLADNEY: Yes, Madam Chair.
8 Commissioner --

9 CHAIR LHAMON: Go ahead, Commissioner
10 Kladney.

11 COMMISSIONER KLADNEY: That's all right.
12 It's been moved.

13 VICE CHAIR TIMMONS-GOODSON: I'll second
14 that.

15 CHAIR LHAMON: Just to make clear, that
16 we're moving to approve the report text and that it's
17 been moved by Commissioner Narasaki and seconded by
18 the Vice Chair. Thank you.

19 Commissioner Kladney, as a sponsor of the
20 project, would you like to begin our discussion?

21 COMMISSIONER KLADNEY: Yes, I would, Madam
22 Chair. I proposed this project in 2014 when police
23 use of force reached a high point in the news. Cases
24 like the shooting of Tamir Rice and John Crawford
25 troubled me then and continue to stand as examples

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1 where lives were cut short without justification.

2 I would also like to note that all eight
3 Commissioners on the Commission at the time -- seven
4 other Commissioners co-sponsored this project. Just
5 before our 2015 briefing, the terrible news of Walter
6 Scott showed lawless police use of force taking a life
7 that should never have been taken.

8 The attention to these shootings helped to
9 uncover friction between police and communities. It
10 also showed the ways that police use of force is not
11 tracked and how officers are not held accountable in
12 these situations where it's called for.

13 I am proud of the briefing we held at the
14 John Jay College School of Criminal Justice in New
15 York City. I would also like to thank the many
16 current and former Commission staff who made it happen
17 and those who worked on the report that followed.

18 To name a few, I'd like to thank Marik
19 Xavier-Brier, Katherine Culliton-Gonzalez, Maureen
20 Rudolph, and both of their teams for excellent
21 research and drafting. I'd especially like to thank
22 Pam Dunston and Tina Louise Martin and their teams for
23 everything that needed to happen to have a difficult
24 field hearing in New York City. It's a hard location
25 to work at. I'm very grateful for all the work you

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1 do, and I thank the Commissioners' special assistants
2 and interns who all reviewed the report, worked on it
3 to shape the final version on a bipartisan basis.

4 Since the briefing, some unjustified
5 police uses of force have continued despite the
6 national attention on the issue. I believe a great,
7 great majority of law enforcement officers perform
8 their jobs excellently, even in trying circumstances.

9 I think they are trying to do good. I greatly
10 respect their courage and those who seek to do the
11 right thing by their communities.

12 Unfortunately, as a nation, we still have
13 to ensure Constitutional and excellent policing
14 practices for all people. There is a lot that can be
15 done. Our report shows many departments are making
16 progress that should be emulated. It also shows an
17 abdication of responsibility at the federal level for
18 continuing to work with police departments to make
19 these improvements.

20 I thank my fellow Commissioners for
21 supporting this project, and I hope the Commission's
22 report and our findings and recommendations help us as
23 a nation make progress on this issue.

24 Thank you.

25 CHAIR LHAMON: Thank you, Commissioner

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1 Kladney. To continue the discussion, I offer a few
2 points.

3 First, I thank you, Commissioner Kladney,
4 for your leadership in initiating the project and
5 seeing it through to this point. And I echo your
6 thanks to our staff for their work on this project.

7 Though the project began three years ago,
8 it unfortunately remains a timely topic for the
9 Commission to address. In the report text, which has
10 undergone rigorous research and review by numerous
11 staff members as well as Commissioners, recognizes
12 ongoing work to improve police practices, and, as an
13 important addition, can serve as a foundation for
14 necessary further reform.

15 I hope in particular the Department of
16 Justice will heed the calls in this report for its
17 involvement in developing best practices and working
18 with police departments around the country to ensure
19 Constitutional policing so all persons involved in
20 police interactions, police officers, and the
21 communities they serve may remain safe.

22 Is there any other discussion or
23 amendments for this report? Commissioner Narasaki?

24 COMMISSIONER NARASAKI: Yes, Madam Chair.
25 I would very much like to add my appreciation to

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1 Commissioner Kladney and his wonderful special
2 assistant for their leadership in working with staff
3 to shepherd this report through. It has been a long
4 time that we have been working on it, and it's sad
5 that it's still extremely timely, even though the
6 hearing was in 2015.

7 I do want to also acknowledge that we had
8 many state advisory committees who also had hearings
9 on the topic and want to thank the regional staff and
10 those committees for their contributions which were
11 very important to keeping the report very current. So
12 thank you.

13 CHAIR LHAMON: Any further discussion?
14 Hearing none, I'll call the question and take a roll
15 call vote. I just want to be very clear that what
16 we're voting on is the version of the report,
17 including some supplemental edits as circulated by
18 Commissioner Kladney's special assistant yesterday.

19 So moving forward, Commissioner Adegbile,
20 how do you vote?

21 COMMISSIONER ADEGBILE: Recuse.

22 CHAIR LHAMON: Commissioner Heriot?

23 COMMISSIONER HERIOT: I vote no.

24 CHAIR LHAMON: Commissioner Kirsanow?

25 COMMISSIONER KIRSANOW: No.

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1 CHAIR LHAMON: Commissioner Kladney?

2 COMMISSIONER KLADNEY: Yes.

3 CHAIR LHAMON: Commissioner Narasaki?

4 COMMISSIONER NARASAKI: Yes.

5 CHAIR LHAMON: Commissioner Yaki?

6 COMMISSIONER YAKI: Aye.

7 CHAIR LHAMON: Vice Chair Timmons-Goodson?

8 VICE CHAIR TIMMONS-GOODSON: Yes.

9 CHAIR LHAMON: And I vote yes. The motion
10 passes. One Commissioner is recused, two
11 Commissioners opposed, no Commissioner abstained, all
12 others were in favor.

13 Next we will consider the findings and
14 recommendations to the report. To open the floor for
15 discussion, is there a motion?

16 COMMISSIONER KLADNEY: Madam Chair, David
17 again. I would move that we approve the final version
18 of the findings and recommendations which all the
19 Commissioners, I believe, received yesterday.

20 CHAIR LHAMON: Thank you. Is there --

21 COMMISSIONER KLADNEY: Which had minor
22 edits in it.

23 CHAIR LHAMON: Sorry. Thank you. Is
24 there a second?

25 COMMISSIONER NARASAKI: I second.

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1 CHAIR LHAMON: Thank you. Is there any
2 discussion? Hearing none, I call the question and
3 take a roll call vote.

4 Commissioner Adegbile, how do you vote?

5 COMMISSIONER ADEGBILE: Recused.

6 CHAIR LHAMON: Thank you. Commissioner
7 Heriot?

8 COMMISSIONER HERIOT: I vote no.

9 CHAIR LHAMON: Commissioner Kirsanow?

10 COMMISSIONER KIRSANOW: No.

11 CHAIR LHAMON: Commissioner Kladney?

12 COMMISSIONER KLADNEY: Yes.

13 CHAIR LHAMON: Commissioner Narasaki?

14 COMMISSIONER NARASAKI: Yes.

15 CHAIR LHAMON: Commissioner Yaki?

16 COMMISSIONER YAKI: Aye.

17 CHAIR LHAMON: Vice Chair Timmons-Goodson?

18 VICE CHAIR TIMMONS-GOODSON: Yes.

19 CHAIR LHAMON: And I vote yes. The motion
20 passes. One Commissioner is recused, two
21 Commissioners voted no, no Commissioner abstained, and
22 all others were in favor.

23 I'll note that with the adoption of the
24 report and the findings and recommendations, the clock
25 begins ticking with respect to deadlines for

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1 statements and rebuttals. The deadline for statements
2 will be Monday, September 17, and the deadline for
3 rebuttals will be Wednesday, October 17. If a
4 Commissioner intends to file a surrebuttal, notice
5 will need to be given by Wednesday, October 24, and
6 the surrebuttal will be due on Wednesday, October 31.

7 The next item is a discussion and vote on
8 the Commission's report titled, Contemporary Civil
9 Rights Challenges: A View from the States, 2018 Survey
10 of the State Advisory Committees to the U.S.
11 Commission on Civil Rights.

12 **DISCUSSION AND VOTE ON THE COMMISSION'S REPORT**
13 **TITLED, A VIEW FROM THE STATES: 2018 SURVEY**
14 **OF THE STATE ADVISORY COMMITTEES TO THE**
15 **U.S. COMMISSION ON CIVIL RIGHTS**

16 CHAIR LHAMON: To open the floor for
17 discussion, I move for approval of the report text as
18 circulated by my special assistant on Thursday, August
19 9, 2018, subject to any editorial or typographical
20 changes necessary for publication.

21 Is there a second?

22 VICE CHAIR TIMMONS-GOODSON: I second.
23 This is the Vice Chair.

24 CHAIR LHAMON: Thank you, Madam Vice
25 Chair. To begin discussion, I offer a few points.

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1 First, I thank our staff, especially
2 Sarale Sewell as well as Katherine Culliton-Gonzalez
3 and Maureen Rudolph, for moving this project forward.

4 The Commission is uniquely strengthened by our
5 capacity to benefit from the expertise of the advisory
6 committees we have in all 50 states plus the District
7 of Columbia.

8 The survey reported in this publication
9 was a valuable opportunity to hear from members of all
10 committees about the issues they thought most
11 important in their states as well as the issues they
12 thought we at the Commission should take up in our
13 nationwide assessments.

14 I am so very grateful to the state
15 advisory committee members who took the time to
16 complete the survey, and I know my work on this
17 Commission already is richer for benefitting from the
18 views this survey report describes. I look forward to
19 a wider public also benefitting from the expertise the
20 survey captures once the report is public.

21 Is there any other discussion or
22 amendments for this report? Hearing none, I'll call
23 the question, take a roll call vote.

24 Commissioner Adegbile, how do you vote?

25 COMMISSIONER ADEGBILE: Aye.

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1 CHAIR LHAMON: Commissioner Heriot?

2 COMMISSIONER HERIOT: I'm going to abstain
3 on this one.

4 CHAIR LHAMON: Commissioner Kirsanow?

5 COMMISSIONER KIRSANOW: Yes.

6 CHAIR LHAMON: Commissioner Kladney?

7 COMMISSIONER KLADNEY: Yes.

8 CHAIR LHAMON: Commissioner Narasaki?

9 COMMISSIONER NARASAKI: Yes.

10 CHAIR LHAMON: Commissioner Yaki?

11 COMMISSIONER YAKI: Aye.

12 CHAIR LHAMON: Vice Chair Timmons-Goodson?

13 VICE CHAIR TIMMONS-GOODSON: Yes.

14 CHAIR LHAMON: And I vote yes. The motion
15 passes. One Commissioner abstained, no Commissioner
16 opposed, all others were in favor.

17 Thank you all. I'll note that all
18 Commissioners agreed to forego individual statements
19 on this report, and so we will move to immediate
20 electronic publication of this report in the coming
21 days.

22 So we will now discuss and vote on the
23 schedule for business meetings in 2019.

24 **DISCUSSION AND VOTE ON**

25 **2019 BUSINESS MEETING CALENDAR**

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1 CHAIR LHAMON: Everyone should have a
2 proposed list of dates for meetings next year which I
3 will read out loud now: January 25, February 22, March
4 22, April 12, May 17, June 7, July 19, August 16,
5 September 13, October 18, November 15, and December 6.

6 To open the floor for discussion, I move
7 to approve the schedule as previously circulated and
8 read out loud now. Do I have a second?

9 COMMISSIONER NARASAKI: I second.

10 CHAIR LHAMON: Thank you. Any discussion?
11 Commissioner Narasaki?

12 COMMISSIONER NARASAKI: Yes, Madam Chair.
13 As I noted to staff, I do have afternoon conflicts
14 for the June, July, and August meetings. As long as
15 they are business meetings and not all-day hearings, I
16 can make those dates work.

17 CHAIR LHAMON: Thank you. So unless
18 there's further discussion, I'll call the question and
19 take a roll call vote.

20 Commissioner Adegbile, how do you vote?

21 COMMISSIONER ADEGBILE: Aye.

22 CHAIR LHAMON: Commissioner Heriot?

23 COMMISSIONER HERIOT: Aye.

24 CHAIR LHAMON: Commissioner Kirsanow?

25 COMMISSIONER KIRSANOW: Yes.

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1 CHAIR LHAMON: Commissioner Kladney?

2 COMMISSIONER KLADNEY: Yes.

3 CHAIR LHAMON: Commissioner Narasaki?

4 COMMISSIONER NARASAKI: Yes.

5 CHAIR LHAMON: Commissioner Yaki?

6 COMMISSIONER YAKI: Aye.

7 CHAIR LHAMON: Vice Chair Timmons-Goodson?

8 VICE CHAIR TIMMONS-GOODSON: Yes.

9 CHAIR LHAMON: And I vote yes. The motion
10 passes unanimously.

11 Next, we'll discuss and vote on the
12 nominated chair of the Committee's Oregon Advisory
13 Committee.

14 **DISCUSSION AND VOTE ON COMMISSION'S**

15 **OREGON ADVISORY COMMITTEE CHAIR**

16 CHAIR LHAMON: Before we begin discussion,
17 I remind my fellow Commissioners that the Commission
18 has a policy not to defame, degrade, or incriminate
19 any person. Each of these individuals has agreed to
20 volunteer time and energy in the pursuit of the
21 protection of civil rights.

22 The Staff Director has recommended for
23 appointment Thompson Faller as Chair of the Oregon
24 State Advisory Committee. To open the floor for
25 discussion, I move that we approve this appointment.

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1 Do I have a second?

2 COMMISSIONER KLADNEY: Madam Chair, I'll
3 second.

4 CHAIR LHAMON: Thank you. That was
5 Commissioner Kladney. Any discussion of this
6 appointment? Okay. I'll call the question and take a
7 roll call vote. Commissioner Adegbile, how do you
8 vote?

9 COMMISSIONER ADEGBILE: Aye.

10 CHAIR LHAMON: Commissioner Heriot?

11 COMMISSIONER HERIOT: Aye.

12 CHAIR LHAMON: Commissioner Kirsanow?

13 COMMISSIONER KIRSANOW: Yes.

14 CHAIR LHAMON: Commissioner Kladney?

15 COMMISSIONER KLADNEY: Yes.

16 CHAIR LHAMON: Commissioner Narasaki?

17 COMMISSIONER NARASAKI: Yes.

18 CHAIR LHAMON: Commissioner Yaki?

19 COMMISSIONER YAKI: Aye.

20 CHAIR LHAMON: Vice Chair Timmons-Goodson?

21 VICE CHAIR TIMMONS-GOODSON: Yes.

22 CHAIR LHAMON: And I vote yes. The motion
23 passes unanimously.

24 The next item on our amended agenda is to
25 discuss and vote on the release of the Commission's

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1 report, Stand Your Ground.

2 **DISCUSSION AND VOTE ON COMMISSION'S REPORT,**

3 **STAND YOUR GROUND**

4 CHAIR LHAMON: To open the floor for
5 discussion, do we have a motion?

6 COMMISSIONER YAKI: I have a motion.

7 CHAIR LHAMON: Okay, Commissioner Yaki?

8 COMMISSIONER YAKI: Yes, I move to release
9 this report as a transcript of our hearing in Orlando
10 and only with the Commissioners' statements to
11 accompany it.

12 CHAIR LHAMON: Thank you. Is there a
13 second?

14 COMMISSIONER NARASAKI: I second.

15 CHAIR LHAMON: Thank you. To begin
16 discussion, I offer a few points. This project stems
17 from a briefing that the Commission held in 2014. It
18 was and continues to be an important topic for civil
19 rights evaluation. Very recent news reports suggest
20 Stand Your Ground laws are used and can be used in
21 ways that are deeply troubling, and there is evidence
22 to suggest racial discrimination.

23 Unfortunately, our record from our
24 investigation is dated, and I understand the data
25 collected for the report is insufficient to address

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1 the scope of the investigation, separate and apart
2 from the age of the data. The staff who worked on
3 this report no longer work at the Commission.

4 I am proud and grateful that our staff
5 have made tremendous strides, even in challenging
6 budgetary times, in moving through the backlog of
7 Commission reports that existed when I joined the
8 Commission. Whereas when I joined the Commission a
9 year and a half ago, we had 13 reports pending and we
10 voted to add 5 more topics, rounding our total to 18
11 pending reports, following publication of reports from
12 our earlier votes today before this one, now we will
13 have 8 reports pending.

14 I am deeply grateful to the Commission
15 staff for their hard work to press our mission forward
16 and to my fellow Commissioners for committing our time
17 and expertise to sharing our views on these critically
18 important civil rights topics. And I look forward to
19 the publication of the remaining reports on our agenda
20 in addition to adding to that important body of work.

21 For this Stand Your Ground project, I am
22 told we effectively would need to restart the
23 investigation before we could offer considered
24 Commission judgment and reporting. Commissioner
25 Adegbile and I were not Commission members at the time

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1 of this investigation, and I understand Commissioner
2 Kladney was not present for its briefing.

3 Facing the difficult circumstance of
4 insufficient data to offer current analysis and a need
5 to restart an investigation before having an
6 opportunity to deliver that analysis, I support this
7 motion to release the report as transcript only with
8 Commissioner statements as a way to share the
9 information the Commission has taken in on this
10 crucial topic and offer an opportunity for
11 Commissioners to share views based on the record we
12 have.

13 Is there any further discussion?
14 Commissioner Heriot?

15 COMMISSIONER HERIOT: Yes, I object to
16 publishing this report without the empirical research
17 that we did undertake. The fact that it was
18 insufficient to prove the null hypothesis does not
19 mean that it's not useful. In fact, I think what's
20 happened here is that the members of the Commission
21 are unhappy with what the data show. And it's
22 important that what we have be part of the report.

23 I also am assuming that given that this
24 means that we have three outstanding reports, that if
25 we're going to do statements, they need to be timed so

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1 that they can be given our attention. So while I
2 object to the report, I would intend to write a
3 statement. And I would like the schedule for that to
4 take us beyond the two reports that we already have
5 statements pending.

6 I mean, right now, we're working on our
7 rebuttals for the voting rights report, and that's
8 overlapping with the police practices report. And I
9 think we can handle that. But I don't think we can
10 handle throwing another set of statements on top of
11 it.

12 CHAIR LHAMON: Commissioner Heriot, I
13 think that's fair, and the plan is to stagger time for
14 statements. So I think there will be time for this as
15 well. Thank you.

16 Any further discussion? Okay. I'll call
17 the question and take a roll call vote.

18 Commissioner Adegbile, how do you vote?

19 COMMISSIONER ADEGBILE: Abstain.

20 CHAIR LHAMON: Commissioner Heriot?

21 COMMISSIONER HERIOT: I vote no.

22 CHAIR LHAMON: Commissioner Kirsanow?

23 COMMISSIONER KIRSANOW: No.

24 CHAIR LHAMON: Commissioner Kladney?

25 COMMISSIONER KLADNEY: Yes.

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1 CHAIR LHAMON: Commissioner Narasaki?

2 COMMISSIONER NARASAKI: Yes.

3 CHAIR LHAMON: Commissioner Yaki?

4 COMMISSIONER YAKI: Aye.

5 CHAIR LHAMON: Vice Chair Timmons-Goodson?

6 VICE CHAIR TIMMONS-GOODSON: Yes.

7 CHAIR LHAMON: And I vote yes. The motion
8 passes. Two Commissioners opposed, one Commissioner
9 abstained, all others were in favor.

10 I'll note that with this vote, the clock
11 begins ticking with respect to deadlines for
12 statements and rebuttals, as Commissioner Heriot has
13 raised. Because we also approved today the
14 Commission's report on police practices, we will
15 stagger the deadlines for statements, rebuttals, and
16 surrebuttals. The deadline for statements will
17 therefore will be -- October 1 and the deadline --

18 COMMISSIONER HERIOT: Wait, that's not
19 much of a stagger.

20 CHAIR LHAMON: It gives us two additional
21 weeks.

22 COMMISSIONER HERIOT: Well, that's not
23 enough. I mean, that's just silly.

24 CHAIR LHAMON: Well, this is the current
25 plan, but we can discuss it if we need to come up with

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1 an additional plan that will work.

2 COMMISSIONER HERIOT: I mean I can't
3 possibly work on three things at the same time. This
4 is a fairly complicated thing. We need to string it
5 out longer than that.

6 CHAIR LHAMON: Okay. So why don't we have
7 a discussion. I'll tell you the dates that we have
8 currently discussed and I understood your special
9 assistant to have agreed to. But we can --

10 COMMISSIONER HERIOT: No, no.

11 CHAIR LHAMON: But we can --

12 COMMISSIONER HERIOT: I'm the one that
13 writes the statements.

14 CHAIR LHAMON: Wonderful. Then we can
15 find additional time and think about what will work.
16 But the current plan was that the statements will be
17 Monday, October 1, the deadline for rebuttals would be
18 Thursday, November 1. And if a Commissioner intended
19 to file a surrebuttal, notice will need to be given by
20 Thursday, November 8, and the surrebuttal would be due
21 Thursday, November 15.

22 If we need to work on a schedule that
23 better accommodates Commissioner Heriot's schedule,
24 I'm happy to hear what that schedule could look like.

25 COMMISSIONER HERIOT: Well, why don't we

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1 just take out -- what I really need is time for the
2 initial statement. And so the October date is the one
3 that is the biggest problem. I think I can probably
4 do rebuttal faster than 30 days, and I doubt
5 surrebuttal is going to be needed. I mean, I've never
6 done a surrebuttal. So what I really need is run this
7 by October 31st, rebuttals two weeks after that, so --

8 CHAIR LHAMON: Does any Commissioner have
9 concern with modifying the schedule that way or have a
10 concern with deciding this at this moment?

11 COMMISSIONER HERIOT: Better to do it now
12 than later.

13 COMMISSIONER NARASAKI: I support
14 Commissioner Heriot's request for an extension. My
15 understanding is we are also hopeful to get another
16 report ready for vote this fall. And so that will add
17 to the challenge. And so I am supportive.

18 CHAIR LHAMON: Any other Commissioners
19 with views or concerns?

20 COMMISSIONER HERIOT: Is there a
21 particular date you want to get this done by? Is
22 there a drop dead date any --

23 CHAIR LHAMON: I don't think so. So I
24 have no objection. I want to make sure that what
25 we're talking about works for other schedules.

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1 Hearing no concern, so then what we're discussing is
2 deadline October 31?

3 COMMISSIONER HERIOT: I don't know what
4 day of the week that is. I just made that up.

5 CHAIR LHAMON: That is find out-able. So
6 October 31 is a Wednesday, and then the deadline for
7 rebuttals would be two weeks following that which
8 would be November 14.

9 COMMISSIONER HERIOT: Yes.

10 CHAIR LHAMON: And --

11 COMMISSIONER HERIOT: Surrebuttals a week
12 later. But again, I --

13 CHAIR LHAMON: So surrebuttals a week
14 later takes us into Thanksgiving which is not an issue
15 for me, but just making sure people are clear about
16 that. Okay, okay. That is our current plan.

17 While we're on that topic, I think we had
18 an issue about surrebuttals for another report coming
19 and a deadline for that. Having reached this
20 agreement that we likely don't need the surrebuttals
21 for the Stand Your Ground report, are we in a position
22 to expect that we likely don't need surrebuttals for
23 the report on Native American civil rights?

24 COMMISSIONER HERIOT: I can't tell you.

25 CHAIR LHAMON: Okay. Our next item on our

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1 agenda is to hear from the Staff Director Mauro
2 Morales for our monthly Staff Director's report.

3 **MANAGEMENT AND OPERATIONS**

4 **STAFF DIRECTOR'S REPORT**

5 MR. MORALES: Thank you, Madam Chair.
6 Since there's a 13-hour time difference where I
7 currently am and D.C. --

8 COMMISSIONER HERIOT: Where are you?

9 MR. MORALES: I would defer any of my -- I
10 am in Tokyo, Japan at the moment.

11 COMMISSIONER HERIOT: Cool.

12 MR. MORALES: I will defer any discussion.

13 Of course, if a Commissioner has any questions, I
14 will be in the office on Monday and available to speak
15 with you. So I thank you, Madam Chair.

16 CHAIR LHAMON: Thank you, Mr. Staff
17 Director. I hope you get some sleep, and I appreciate
18 your calling in from Tokyo.

19 If nothing further, I hereby adjourn --

20 MR. MORALES: Thank you.

21 CHAIR LHAMON: Oh, sorry. Commissioner
22 Narasaki?

23 COMMISSIONER NARASAKI: So, Madam Chair,
24 you earlier talked about the amazing work that our
25 office of -- I never know what it stands for -- OCRE,

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1 our research office has done to help us really get
2 ahead and start to clear the backlog significantly.

3 And I also want to note the performance
4 and productivity of our state advisory committees.
5 Now that they are full in terms of having actual
6 people in the Committees, it has been a challenge for
7 staff because we haven't been able to increase the
8 number of staff. And so they are carrying a much
9 heavier load. But I do want to note the productivity
10 and the value that the reports on the state level have
11 contributed to our own Commission report.

12 So I just want to add that. Thank you to
13 the leadership of David Mussatt, the regional staff,
14 and, of course, our Staff Director who has been moving
15 all of these pieces with very limited resources.

16 **III. ADJOURN MEETING**

17 CHAIR LHAMON: Very much echo that
18 gratitude. It's really exciting to be able to see the
19 enormous productivity from the state advisory
20 committees and to benefit from their expertise. Thank
21 you.

22 Okay. With that, I hereby adjourn our
23 meeting at 11:15 a.m. Eastern Time. Thank you.

24 (Whereupon, the above-entitled matter went
25 off the record at 11:15 a.m.)

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