

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC BUSINESS MEETING

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FRIDAY, OCTOBER 12, 2018

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The Commission convened via teleconference
at 10:00 a.m., Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair

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

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STAFF PRESENT:

LASHONDA BRENSON

KATHERINE CULLITON-GONZALEZ

PAMELA DUNSTON, Chief, ASCD

ALFREDA GREENE

WARREN ORR

CORRINE SANDERS, CRO

SARALE SEWELL

AHRON SINGER

BRIAN WALCH

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

A G E N D A

I. APPROVAL OF AGENDA.....6

II. PRESENTATION OF REPORT ON BARRIERS
TO VOTING IN LOUISIANA.....7

III. PRESENTATION ON ELDER ABUSE IN NEW
MEXICO.....20

IV. PRESENTATION OF REPORT ON THE COLORADO
CONSTITUTION'S NO AID TO SECTARIAN
INSTITUTIONS CLAUSE AND ITS IMPACT ON
CIVIL RIGHTS.....31

V. MOTION TO AMEND STAND YOUR GROUND
TIMELINE.....39

VI. STAFF DIRECTOR'S REPORT.....40

VII. ADJOURN MEETING42

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1 P R O C E E D I N G S

2 10:00 a.m.

3 OPERATOR: Good day and welcome to the
4 Commission business meeting. At this time, I would
5 like to turn the conference over to Chair Catherine
6 Lhamon. Ma'am, please go ahead.

7 CHAIR LHAMON: Thank you. This meeting of
8 the U.S. Commission on Civil Rights comes to order at
9 10 a.m. Eastern Time on October 12, 2018. The meeting
10 takes place over the phone.

11 I'm Chair Catherine Lhamon. I'd like to
12 confirm each of the Commissioners on the line, so I'll
13 take a roll call here at the outset. Please say
14 present when I say your name. Vice Chair Timmons-
15 Goodson. Madame Vice Chair, if you're speaking,
16 you're on mute. Vice Chair Timmons-Goodson, are you
17 present?

18 VICE CHAIR TIMMONS-GOODSON: Present, I am
19 present. Thank you.

20 CHAIR LHAMON: Thank you. See
21 Commissioner Heriot has just joined us in the room.
22 Commissioner Heriot, you're present?

23 COMMISSIONER HERIOT: I am present, and I
24 have also brought along Ahron Singer, who's an intern.
25 She's here on the new American civil rights project.

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1 CHAIR LHAMON: Okay, thank you.
2 Commissioner Kirsanow.

3 COMMISSIONER KIRSANOW: Here.

4 CHAIR LHAMON: Thank you. Commissioner
5 Kladney? Commissioner Kladney, if you're speaking,
6 you're on mute. Commissioner Kladney, are you
7 present? We may have lost him. He was on earlier.

8 COMMISSIONER KLADNEY: No, I am here.

9 CHAIR LHAMON: Thank you.

10 COMMISSIONER KLADNEY: Here.

11 CHAIR LHAMON: Thank you. Commissioner
12 Narasaki.

13 COMMISSIONER NARASAKI: Here.

14 CHAIR LHAMON: Commissioner Yaki.

15 COMMISSIONER YAKI: Here.

16 CHAIR LHAMON: Thank you. Okay, so, we
17 have a quorum of the Commissioners present. Is the
18 Court Reporter present?

19 COURT REPORTER: I'm here.

20 CHAIR LHAMON: Thank you. Is the Staff
21 Director present?

22 STAFF DIRECTOR MORALES: I am.

23 CHAIR LHAMON: Thank you. The meeting now
24 comes to order. Is there a motion to approve the
25 agenda for this business meeting?

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I. APPROVAL OF AGENDA

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VICE CHAIR TIMMONS-GOODSON: So moved.

CHAIR LHAMON: Thank you.

COMMISSIONER NARASAKI: I second, Karen Narasaki.

CHAIR LHAMON: Thank you. Are there any amendments?

COMMISSIONER YAKI: Commissioner Yaki.

CHAIR LHAMON: Go ahead, Commissioner Yaki.

COMMISSIONER YAKI: I'd like to add amendment to, for a motion to modify the time for the statements, etc., for the Stand Your Ground report.

CHAIR LHAMON: Okay, thank you. Is there a second?

COMMISSIONER NARASAKI: I second, sorry.

CHAIR LHAMON: Thank you. Commissioner Narasaki, thank you. As a reminder to the Commissioners, if you speak, with a telephonic meeting, just say who you are so the Court Reporter can record it. If there are no further amendments, let's vote to approve the agenda as amended. All those in favor say aye.

(Chorus of ayes.)

CHAIR LHAMON: Any opposed? Any

1 abstentions? The motion passes unanimously.

2 We'll now hear from our Louisiana Advisory
3 Committee Chair, Robert Lancaster, on the Committee's
4 recently-released report titled Barriers to Voting in
5 Louisiana. Mr. Lancaster, you have ten minutes, and
6 welcome.

7 **II. PRESENTATION OF REPORT ON**
8 **BARRIERS TO VOTING IN LOUISIANA**

9 MR. LANCASTER: Thank you very much, Madam
10 Chair. Thanks to the Commission for inviting me to
11 report on the work that the Louisiana State Advisory
12 Committee did in investigating barriers to voting in
13 Louisiana.

14 I also want to thank the Commission for
15 their 2018 statutory report. It was quite
16 comprehensive and thorough, and I hope in some small
17 way the work that we did in Louisiana helped
18 contribute to your work on that report.

19 And I also wanted to thank David Barreras,
20 our DFO [Designated Federal Officer]. He's been
21 consistent and diligent in assisting us. We pulled
22 this together in a very short timeframe. Also Corrine
23 Sanders, another staff with the Commission. We
24 couldn't have done it without their just consistent
25 assistance. They've been phenomenal.

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1 The members of the State Advisory
2 Committee also I want to recognize. We're all
3 volunteers with really demanding time, and they all
4 really pitched in to pull this together. I especially
5 want to thank Andrea Armstrong, Marjorie Esman, and
6 Rob Garda. They took a significant role in drafting
7 this topic. But all members of the Committee who
8 attended our meetings were very much involved.

9 So the Louisiana Committee, through a
10 majority vote in September of 2017, decided that your
11 work and your statutory report was of significant
12 importance to us as well. And so we sought out to
13 examine barriers to voting in Louisiana that might
14 have some discriminatory impact.

15 In carrying out this task, we identified
16 important stakeholders, we searched for people with
17 diverse perspectives and direct knowledge of these
18 issues. We identified academics, politicians,
19 advocacy organizations, community organizations, and
20 citizens with varied perspectives.

21 And since our Committee is really
22 consisting of people primarily in New Orleans and
23 Baton Rouge, it was really important for us to reach
24 out and make sure that we did a statewide
25 investigation and also made our inquiry accessible to

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1 people around the state.

2 And to that end, we actually conducted two
3 hearings, one in north Louisiana in November 2017 at
4 Grambling State University, and then one December 6,
5 2017 in Baton Rouge. And we also collected additional
6 testimony during our telephonic meetings.

7 The Committee identified issues that sort
8 of frequently recurred and testimonies that we
9 received and information we gathered. I'll talk about
10 these issues briefly, each one. But just to list
11 them, polling locations and location selection was an
12 issue. There were issues around early voting,
13 including early voting locations, the periods of time
14 that early voting was allowed, and also the
15 accessibility of early voting locations.

16 There was also issues around the
17 unavailability of same-day registration in Louisiana.

18 There were some issues around some voter
19 identification requirements. Also issues around
20 provisional ballots in Louisiana. And issues around
21 disenfranchisement of formerly incarcerated and those
22 in pretrial detention.

23 Our findings and recommendations are
24 detailed in our briefing paper that we approved in
25 June 2018, but I'll summarize some of our key findings

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1 and recommendations for you.

2 Regarding polling locations, we received
3 testimony from representatives at our Secretary of
4 State's office that indicated that all the Louisiana
5 law requires assignment of polling place to every
6 election precinct. There are only 2068 polling
7 locations for the 3904 precincts that exist. That's
8 about an average of two precincts served by one
9 polling location.

10 This consolidation is actually permissible
11 under our Louisiana law when the Parish Board of
12 Supervisors, election supervisors, get approval from
13 the Secretary of State's office, they may make these
14 because of budgetary constraints. Also population
15 might cause consolidation of polling locations.

16 But we also received testimony primarily
17 from a professor at the University of Louisiana,
18 Monroe, where he indicated that since 2012, there's
19 103 polling places in Louisiana that's been
20 eliminated. And voters who use those polling places
21 now need to travel longer distances. And perhaps, you
22 know, since they're busier, wait in longer lines to
23 vote. So this discourages voting and has a
24 disproportionate impact on poor, disabled, and
25 elderly.

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1 We also heard from an economist whose
2 statistical research shows us that the racial makeup
3 of an area is a predictor of the number of polling
4 locations in that area. The result is fewer polling
5 locations per voter in areas with more black
6 residents.

7 The community also found that there were
8 some transparency issues and lack of clarity in the
9 decision-making process regarding polling locations or
10 the elimination or consolidation of polling locations
11 when those eliminations or consolidations occurred.
12 We also have some concerns about the makeup of the
13 Parish Board of Election Supervisors.

14 The makeup's such that members of a
15 particular political party can capture the decision-
16 making process as to polling locations. And that sort
17 of led us to recommendations there needed to be more
18 transparency and accountability in this decision-
19 making process regarding polling locations.

20 Looking at early voting in Louisiana, the
21 Committee heard a good bit of testimony who had
22 concern about the number of early voting locations
23 available, and also the periods of time allotted for
24 early voting and the accessibility for early voting.
25 As of spring 2018, there were 94 early voting

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1 locations for the 3904 precincts in Louisiana.

2 And despite this number, there's a
3 shortage of early voting locations in certain areas of
4 the state. For example, Baton Rouge, New Orleans, and
5 Jefferson Parish, the three most populated areas in
6 New Orleans, have four early voting locations.
7 However, other parishes, like Caddo, which is the
8 fourth most populated area, or Lafayette, which is the
9 fourth most populated city, only has one. And those
10 often serve 260,000 residents or more.

11 Also, testimony revealed that Louisiana
12 doesn't have sufficient early voting locations, and
13 the state failures to procure more early voting
14 locations frustrates the exercise of the right to vote
15 and also undermines the convenience that early voting
16 is supposed to provide. There's also distance that
17 disproportionally impacts elderly, disabled, and poor.

18 Specific to this, we heard testimony from
19 the League of Women Voters in Lafayette reporting
20 exceptionally long lines for the one polling, early
21 voting location that's available in Lafayette. Also
22 we heard testimony, currently Louisiana early voting
23 ends seven days prior to an election, and it doesn't
24 include Sundays or legal holidays. Early voting
25 locations are closed on Sundays.

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1 Testimony we heard suggested a broad
2 community support for Sundays, given that many people
3 are off work, it's easier for them to get to those
4 polling locations on Sundays. Also, it's a longer
5 voting periods in general, and up to Election Day
6 even.

7 As to the accessibility of early voting
8 locations, we heard testimony indicating several
9 barriers for those with disabilities, and also
10 concerns were raised about some of the locations might
11 not be compliant with the ADA [Americans with
12 Disabilities Act] or HAVA [Help America Vote Act].

13 Registration issues, we identified a
14 number of concerns relating to registration issues.
15 Louisiana currently, our registration procedure is
16 that 30 days prior to election, if you do it by mail
17 or in person. If you do it online, it's 20 days prior
18 to an election. We heard testimony that this really
19 didn't allow for, well, our law doesn't allow for
20 same-day voter registration with provisional balloting
21 that other states allow.

22 And we heard testimony from several people
23 suggesting that the long registration requirements
24 discourage the franchise. And there's actually the
25 technology available for same-day registration, and

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1 that would increase citizen participation in the
2 electoral process.

3 Other voter registration issues the
4 Committee heard testimony about includes citizens are
5 not being given registration information when applying
6 for public benefits as required by the National Voter
7 Registration Act.

8 Also, people released from incarceration
9 weren't getting sufficient information about the law
10 regarding their right to vote while providing
11 information if they were eligible to vote upon
12 release. I'll actually get to other issues relating
13 to felony disenfranchisement in a moment.

14 Also we heard testimony from some senior
15 advocates for the elderly, who commented that the
16 mail-in form has very, very small print. Also, online
17 voter registration is difficult for a lot of our older
18 citizens to access.

19 So it's a lot of testimony we heard was
20 relating to voter identification. Louisiana passed
21 last session, made changes in the law for the better,
22 so that now all post-secondary, at least state post-
23 secondary educational institutions are required to
24 issue student IDs that meet the voter identification
25 requirements, so it makes it easier for college

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1 students to vote.

2 And also, in Louisiana we do allow for
3 provisional ballot procedures if someone shows up to
4 the polls without a proper ID and fills in and signs
5 an affidavit provided by the poll worker. However,
6 some of the testimony revealed instances where people
7 were turned away from voting and never offered an
8 affidavit.

9 Also, the information that's on the Voter
10 Bill of Rights is actually posted on, at all polling
11 locations is, it's a seven-page sort of poster
12 document. And this is located kind of midway through
13 the --

14 CHAIR LHAMON: Thank you.

15 MR. LANCASTER: So provisional ballots
16 are, we --

17 CHAIR LHAMON: Chair Lancaster, this is
18 Catherine Lhamon. I want to thank you. We're just a
19 little bit past the ten minutes for the presentation,
20 and I do want to make time for Commissioner questions
21 on your -- you started your presentation, you said that
22 you hoped that the report would be useful to the
23 Commission in the report that the Commission issued in
24 September on voting rights.

25 And I want to assure you that it was and

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1 is, and I very much appreciate the comprehensive and
2 very thorough reports from your Committee. And I hope
3 you'll communicate that gratitude to the other members
4 of the Committee as well, and I'll take a moment now
5 just to open for questions from my fellow
6 Commissioners. Commissioner Narasaki.

7 COMMISSIONER NARASAKI: Thank you, Madam
8 Chair. I also want to thank you for your very
9 thoughtful report and recommendations. I think your
10 report highlights the fact that there are a lot of
11 administrative ways that can either make it easier or
12 harder for people to vote, and I appreciate that you
13 really went to into that very thoroughly.

14 I was curious as to how interested the
15 Secretary of State is in implementing some of your
16 recommendations, whether you've gotten any feedback
17 from them or from the local election officials.

18 MR. LANCASTER: Thank you for that
19 question, and I'm glad to hear that our report was
20 useful. Actually, I don't know, we're actually
21 currently in the midst of an election for our
22 Secretary of State. The Secretary of State who was in
23 office at the time we conducted our hearings resigned
24 amid a scandal, and the Deputy, who is actually
25 running for Secretary of State now, did testify at our

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1 hearing. He was quite helpful.

2 They did issue some responses. After the
3 conclusion of our collection of testimony, we provided
4 transcripts of that testimony to the Secretary of
5 State's office. And they did give us some helpful
6 response. Some of the response didn't necessarily
7 indicate a lot of change.

8 The biggest concern for our Secretary of
9 State's office I think is primarily budget, and that a
10 lot of our recommendations would create the need for
11 more resources to implement. And some of our
12 recommendations, for instance relating to felony
13 disenfranchisement were created, you know, with
14 legislative action.

15 As far as the administrative changes, we
16 didn't get a real sense that those were forthcoming,
17 primarily because of budget constraints and some other
18 constraints relating to the recruitment and training
19 of poll workers.

20 The Secretary of State's office did
21 respond that it's very difficult to recruit and sort
22 of maintain a selection of, a collection of trained
23 poll workers around the state, that that's a barrier,
24 and I imagine it is, since they're all volunteers
25 pretty much. Hard to maintain.

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1 COMMISSIONER NARASAKI: Since we have an
2 election coming up, I'm wondering if you saw any
3 action in terms of trying to find sites that weren't
4 more, better accessible to people with disabilities?
5 Because that was a consistent thing we've heard from
6 all of the facts, that no one is doing a very good job
7 in making sure that people with disabilities are
8 really able to fully exercise their right to vote.

9 MR. LANCASTER: Right, and I don't, I
10 can't speak to what progress has been made to that
11 regard in Louisiana. The Committee, our State
12 Advisory Committee, I hope will meet again in November
13 to discuss sort of further action on this, given that
14 we do have an upcoming election and perhaps gather a
15 little bit more information if any progress has been
16 made.

17 COMMISSIONER NARASAKI: Great. And then
18 my final question is: is there any action that you
19 would like us as a Commission to take with your
20 report.

21 MR. LANCASTER: I think a lot of the best
22 action I think is to just get information out relating
23 to these barriers that do exist so that people are
24 aware. I often think that if people sometimes
25 experience these issues with, for instance, accessing

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1 early voting, but don't necessarily sort of think
2 through the ability to get these procedures changed.

3 So the more press, the more information
4 that can be disseminated just to bring these issues to
5 the forefront, I think are helpful.

6 COMMISSIONER NARASAKI: Great, thank you.

7 CHAIR LHAMON: Other questions from other
8 Commissioners? Hearing none, I want to add a second
9 to Commissioner Narasaki's thanks for the vivid detail
10 that this Committee's report includes and the way that
11 it illustrates some of the voting harms that your
12 investigation uncovered.

13 That, the image that you include of voters
14 with disabilities lining halls with wheelchairs and
15 canes waiting for an ability to access a polling
16 location I think will stick with me for quite some
17 time.

18 And the clarity that you offered and the
19 statistical analysis of data in Louisiana showing that
20 racial makeup of an area is a predictor of the number
21 of polling locations in that area I also think is an
22 extraordinary and clear explanation of what that harm
23 can be.

24 And I also very much appreciated the
25 religious freedom recommendation and incorporation in

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1 your analysis of the issue about early voting on
2 Sundays and recommendation that there may be employees
3 who would appreciate a day of worship on Fridays and
4 Saturdays as well. And that an argument for not
5 allowing early voting on Sundays ignores the reality
6 of many faiths that voters may adhere to.

7 So again, thank you very much for the
8 comprehensive report. Also, for taking the time to
9 present today. We really appreciate the opportunity
10 to have heard from you and to have read the benefit of
11 the expertise from your Committee.

12 I'm going to turn now to the Chair of our
13 New Mexico Advisory Committee, Dr. Sandra Rodriguez.
14 We had the pleasure of seeing Dr. Rodriguez here in DC
15 last month, and we're glad to hear from her on the
16 Committee's recently released report titled Elder
17 Abuse in New Mexico.

18 Dr. Rodriguez is welcome. You are
19 presenting for ten minutes, and then we'll open for
20 questions.

21 **III. PRESENTATION OF REPORT ON**

22 **ELDER ABUSE IN NEW MEXICO**

23 MS. RODRIGUEZ: Thank you. And thank you
24 again for the opportunity to be here with you today.
25 I'd like to start off by thanking everyone that worked

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1 on the New Mexico side on this project. It's been a
2 long-term project that we've been working on that
3 originally started in January of 2011, when we began
4 conversation on issues surrounding elderly abuse.

5 I'm just going to take a minute to read
6 out names because it's important to give credence for
7 the work that's been done.

8 Dr. Janet Page-Reeves, Dr. Roger Michener,
9 George L. Bach, Dr. Robert Martinez, Hwasoon Thorson,
10 Elaine Miller, Kenneth Brown, Valerie Jaramillo Webb,
11 Damon Tobias, Charles Vigil, Frances Williams, and
12 Monica Youngblood.

13 And also, we wouldn't be here today if it
14 would not have been for the tremendous support we have
15 received from Mr. David Mussatt and also the [Staff]
16 Director, Mr. Morales.

17 I'd like to go ahead and begin, as I
18 mentioned earlier, we started the conversations here
19 in New Mexico as early as January 2011, in which we
20 began conversations looking at issues that had to do
21 with elder abuse reporting. At that time, we found
22 that there were over 254,000 reports that were given
23 nationally. In New Mexico, there were 10,000 reports
24 that were given, that were reported annually.

25 When we look at New Mexico as a state, we

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1 are a very culturally and ethnically diverse state.
2 Approximately 17% of our population is over the age of
3 65. Seventeen percent in numbers is 350,000
4 individuals that are over 60. We have this past
5 couple of years over 11,500 reported new cases that
6 were made to the Adult Protective Services.

7 Out of those cases, 64% of them are self-
8 neglect, 13% are neglect identified from other
9 individuals, such as caregivers. Twelve percent of
10 the reports have to do with financial exploitation,
11 and ten percent have to do with other types of abuse,
12 such as sexual abuse.

13 We do know that more women suffer from
14 abuse than men. While these numbers seem high,
15 especially in a state as small as we are, it is
16 reported that it is 24 times as high as those that are
17 actually reported. And this has to do with issues
18 surrounding under-reporting.

19 Of those, another extenuating circumstance
20 that we have in New Mexico is that of the individuals
21 of the elderly that are here, 15% of them are at the
22 poverty level or below the poverty level, which
23 exasperates a lot of the issues. What we found in our
24 investigation is that elderly abuse is very much a
25 civil rights issue in that individuals are

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1 specifically and purposely targeted for abuse of one
2 type or another.

3 So this population of individuals are
4 extremely at risk for some type of abuse. In our
5 original project proposal, which we put together after
6 many years, we started in 2011, we finally came
7 together and we put together a proposal in 2016. At
8 this time, we found that nationwide, as many as one in
9 ten elderly have been identified as suffering some
10 type of abuse.

11 We also found, from there we moved off,
12 once our proposal was accepted, we held a briefing in
13 June 24 of 2016. During this time we held, we had
14 five different panels with individuals from the state
15 that came from, we had individuals from the
16 congressional offices, we had the president and CEO
17 from the Hispano Chamber. We had individuals from
18 nonprofits, such as attorneys from the Senior Citizens
19 Law Office, from the Aging Family Center.

20 We had individuals that were working as
21 legal guardians. We had private citizens, we had
22 doctors, nurses. We had individuals from the state
23 agencies, such as the Deputy Secretary for the Aging
24 and Long-term Service Department. We had someone from
25 the Adult Protective Services. And we had individuals

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1 from the city of Albuquerque, from the Senior Affairs
2 for the city of Albuquerque.

3 The information we received was quite
4 diverse, and it was mind-boggling. I can tell you
5 that after that hearing, came back, as we reconvened,
6 there was a brand new appreciation for the topic that
7 we had selected. What we found during our initial
8 analysis of the report, that there were three things
9 that emerged from the testimony.

10 It had to do with financial exploitation,
11 lack of services, and lack of enforcement. But as we
12 began to look further into these and do further
13 research, by the end of the year, in November of 2016,
14 there was an investigator's report that was put out by
15 Diane Dimond, who published a five-part series that
16 had to do on guardianship issues.

17 What was found is that the process was
18 dominated by a group of court-appointed for-profit
19 professionals, and oftentimes they were accused of
20 isolating family members and mismanaging the elder's
21 estate.

22 Six months later, there was another
23 investigative report, and by the Albuquerque Journal.

24 In this there were, it was called Who's Guarding the
25 Guardians. In this report, it actually led to an

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1 arrest and closure of a conservator management
2 company, which again, they were from court-appointed
3 individuals who were there to represent the elderly.

4 In my final report, as we started to put
5 the research that we did after the testimony, we found
6 that there were five dynamics that were apparent. One
7 is that widespread impact of poverty and lack of
8 affordable services to elders and their caregivers was
9 one of the dynamics.

10 Under-reporting of abuse was a second.
11 Three, the structural weaknesses in the healthcare
12 system allow for abuse to go undetected. The fourth
13 one, lack of enforcement of the existing laws and
14 regulations that are there to protect the elders. And
15 the fifth one was a variety of forms of financial
16 exploitation which lead to individuals to prey on the
17 elders.

18 These five dynamics -- what we then did is
19 we moved into the recommendations. I'm just going to
20 go ahead and read what they are, there are several
21 recommendations. But I'm going to point out, though,
22 just quickly, that the lack of, of under-reporting has
23 to do so much with the elder's age, or you know, that
24 if it's a family member, they don't want to, an elder
25 will do whatever they can to protect the family.

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1 They will react as parents, no matter how
2 old they are. And their children are still their
3 children. So the under-reporting is one of the main
4 issues, in my opinion, that needs to be overcome.

5 And that can only take place by making
6 this report a mainstream of you know, the information,
7 just to put it out there so those conversations can
8 begin to take place. Truthful conversations, so that
9 the stigma that comes from elder abuse can start to be
10 broken down. That is the biggest problem, in my
11 opinion.

12 Recommendations, that we have to have more
13 attention that -- yes.

14 CHAIR LHAMON: Thank you so much, we're
15 just at ten minutes and we do have the benefit of
16 having the written recommendations in the report.

17 MS. RODRIGUEZ: Thank you.

18 CHAIR LHAMON: Open for questions from my
19 fellow Commissioners. I very much appreciate your
20 attention to this issue and your presentation today.
21 Commissioner Narasaki.

22 COMMISSIONER NARASAKI: Thank you, Madam
23 Chair, and thank you, Dr. Rodriguez. As I get older,
24 I get more concerned about this particular issue. I'm
25 wondering, it sounds like you did a wonderful job in

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1 really having a breadth of experts testifying.

2 Did you identify any disparities among
3 different communities? For example, for the immigrant
4 elderly who may not speak English, or for, you have a
5 very extensive Native American population. So I'm
6 just wondering if that was anything that you examined.

7 MS. RODRIGUEZ: We did, in that we did, as
8 I mentioned earlier that some of the disparities that
9 happen are based on cultural differences that for some
10 groups who are very much family-oriented and will do
11 whatever it takes to protect your family.

12 There's others now that as things start to
13 change, there are young individuals that are having
14 their families and taking care of their families that
15 elders are put in different facilities because of the
16 lack of the ability to help take care of. So there is
17 a lot to be said for those cultural and tradition
18 differences that exist between our communities.

19 COMMISSIONER NARASAKI: Does the state do
20 a very good job in terms of providing bilingual access
21 for reporting? For example, in, I believe you have an
22 extensive Spanish-speaking population, and you spoke
23 of having someone from the Asian-American community.

24 I'm wondering how well the state does in
25 making sure that those who are limited English

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1 proficient actually know that there are laws that
2 protect them and know how to report.

3 MS. RODRIGUEZ: We did not find that there
4 there's a lot of support in that area. No, the
5 answer's no. They did not do a great job in getting
6 information out.

7 COMMISSIONER NARASAKI: Great, thank you,
8 because that's something actually under the federal
9 law, there's a lot of strong federal guidance. So
10 that's very interesting to hear. And then my last
11 question is just is there anything that you would like
12 our Commission to do in particular with your report?

13 MS. RODRIGUEZ: You know what, getting the
14 information out, that is the, that is huge, is that if
15 we do not make it more, the information more
16 accessible out there, you know, we talked a lot
17 afterwards in our Committee, how do we get this
18 information. And you know, do we disseminate it to
19 community centers, how do we get it to the people that
20 need it.

21 That is problematic, that is problematic.

22 So we need to find avenues to educate not only the
23 elders themselves, but the families that there is,
24 there are services, and how to access those services.

25 COMMISSIONER NARASAKI: Great, thank you,

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1 Dr. Rodriguez, thank you.

2 MS. RODRIGUEZ: Thank you.

3 CHAIR LHAMON: Questions from other
4 Commissioners? Dr. Rodriguez, I was surprised, I'm
5 going to let this slide, but I was surprised to see in
6 the federal legislation description no mention of the
7 Age Discrimination Act of 1975. The Commission is
8 very proud of securing passage and laying the
9 groundwork for it, but I did see its points animating
10 your analysis, so I'm just going to ignore that as
11 oversight.

12 But I did see at page 21 of your report a
13 mention that stakeholders believe the lack of funding
14 for agencies responsible for enforcing laws and
15 regulations that pertain to elder rights is a key fact
16 in the reported lack of response in enforcement. And
17 I wondered if you could amplify what kinds of concerns
18 you all heard about the funding entitlements for
19 Agency enforcement of elders' civil rights.

20 MS. RODRIGUEZ: I'm sorry, I'm having
21 trouble, you kept coming in and out on my phone for
22 some reason. If I understood the question correctly
23 it is on funding. So you're asking about the impact
24 of funding or lack of funding.

25 CHAIR LHAMON: Yes, I was, thank you.

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1 MS. RODRIGUEZ: Is that correct?

2 CHAIR LHAMON: That's correct.

3 MS. RODRIGUEZ: Okay, you know that a good
4 example's going to be that Congressman Lujan Grisham
5 just passed the Care Corps Act, got funding for it
6 this past year. When we were doing our report, at
7 that time they reported that they were trying to get
8 it passed and get funding. So it was an unfunded
9 initiative. And here, two years later, it finally
10 received funding.

11 So what that outlines is that if these
12 issues aren't put out on the forefront, and we are
13 aware of how dire circumstance is, some of the most
14 vulnerable population that we have. Where they're at,
15 that if we don't make it public and we don't start
16 having real, honest conversations about it, there is
17 not going to be any funding. It's not a priority. So
18 I hope that answers your question.

19 CHAIR LHAMON: It does. Thank you so
20 much, Dr. Rodriguez, and thank you for taking your
21 time to present on this report for us. I hope you
22 will communicate our gratitude to your fellow
23 Committee members as well.

24 And with that, we'll move to the next item
25 on our agenda, which is a presentation from Colorado

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1 Advisory Committee member David Kopel on the
2 Committee's recently released report, titled The
3 Colorado Constitution's No Aid to Sectarian
4 Institutions Clause and Its Impact on Civil Rights.

5 IV. PRESENTATION OF REPORT

6 THE COLORADO CONSTITUTION'S NO AID TO SECTARIAN
7 INSTITUTIONS CLAUSE AND ITS IMPACT ON CIVIL RIGHTS

8 CHAIR LHAMON: Mr. Kopel, we'd appreciate
9 a presentation for ten minutes, and then open for
10 questions. Mr. Kopel, if you're on the phone, you're
11 on mute.

12 MR. KOPEL: I'm sorry, is that better now?

13 CHAIR LHAMON: Yes, now we can hear you.

14 MR. KOPEL: All right, great, that's,
15 phones are complicated these days. We chose this
16 project because of great public interest in the topic.

17 One of the state's largest school districts, the
18 Douglas County School District, had adopted a small
19 voucher program, which was open to independent
20 schools, including religious ones.

21 Eventually, the Colorado Supreme Court
22 struck down the program. And the Court split three to
23 three on the issue of the Colorado constitution's No
24 Sectarian Aid for Education Clause. The citing,
25 though, in that case came from the justice on a

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1 separate issue, who held that the program violated a
2 portion of Colorado's School Finance Act.

3 We also knew that there's a nationwide
4 interest in the issue of state prohibitions on aid to
5 religious schools. Soon after we began the project,
6 the US Supreme Court ruled in the Trinity Lutheran
7 case that the Missouri state government's application
8 of a similar clause in the Missouri constitution
9 violated the First Amendment.

10 At the same time, the U.S. Supreme Court
11 overturned the Colorado Supreme Court decision and
12 sent that case back for further consideration. We
13 held a very successful public hearing in July 2017.
14 There were presentations from five experts who had
15 diverse points of view. There was also extensive
16 public testimony, and that too was very diverse.

17 After the fall in the hearing, we
18 continued to receive further public input. This
19 included letters from the public and follow-up
20 analysis from some of the experts. An initial draft
21 of our report was made public in December 2017, and in
22 the following month we received helpful comments and
23 constructive criticism from the public and from some
24 of the experts.

25 We incorporated those ideas into a revised

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1 report, which was again made available for public
2 comment in March. And of course, throughout the
3 process, Committee members provided good suggestions
4 for improvement.

5 As the report demonstrates, we took all
6 perspectives into account, and reported the synthesis
7 of the different perspectives from the experts in the
8 public. We also conducted additional historical and
9 research. And then in April, we adopted the report by
10 a seven-to-one vote. The dissenting member did not
11 offer a reason for the No vote.

12 The Commission staff's review to the
13 submitted report was rigorous and helped make the
14 report more precise in its phrasing and encouraged us
15 to provide more complete citations for various
16 historical facts and legal items. Our response to the
17 staff edits didn't change any of the report's
18 conclusions, although it did improve the phrasing of
19 some of them.

20 And then in our meeting this August, we
21 adopted the report as revised and as recently
22 published by the Commission.

23 As the report details, in Colorado, the No
24 Sectarian Aid Clause has always been a source of
25 religious discrimination. This isn't to say that the

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1 clause was entirely the result of bad motives.

2 While some advocates of the clause past
3 and present have been motivated by very good
4 principles, and these include protecting religious
5 schools from the government or interference that often
6 accompanies government funding, preventing conflicts
7 between different religious groups about funding, and
8 attempting to keep the government neutral and
9 uninvolved in religious matters.

10 Unfortunately, the text and history of
11 Colorado's No Sectarian Aid Clause have not led to
12 neutrality. As of 1876, when our Colorado
13 constitution was adopted, the dictionary definition of
14 sectarian did not mean religious. Instead, sectarian
15 was an epithet against disfavored minority religions.

16 It could be a synonym for fanatical or heretical.

17 In the Colorado context, it was also a
18 code word for Catholic, and reflected hostility
19 towards the Catholic population, particularly the
20 Hispanic population of Southern Colorado, which had
21 once been part of the New Mexico territory.

22 For much of Colorado's history, some
23 public schools, such as those in Denver, did conduct
24 religious education in a manner that was consistent
25 with disrespect for non-Protestant religious

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1 minorities. In particular, this included daily
2 readings from the King James Bible. That's a bible
3 translation which is acceptable to all Protestants,
4 but not to Catholics.

5 And of course, the King James Bible
6 doesn't accord with the religious perspectives of
7 Jewish people or some of Colorado's small but growing
8 population of immigrants from China and Japan.

9 Starting in the 1970s, the legislature
10 created and expanded higher education scholarship
11 programs that could be used at non-government schools.

12 Again, the No Sectarian Aid Clause became a basis for
13 religious discrimination. State government officials
14 decided which types of religious schools were
15 politically correct and which were not.

16 For example, Regis University is a liberal
17 Catholic school, and Naropa University is liberal
18 Buddhist school. Both of these were not sectarian, in
19 the views of Colorado government officials, but
20 Colorado Christian University is a conservative, non-
21 denominational school, and according to state
22 officials, it was sectarian. And so its students
23 could not receive scholarships.

24 While this discrimination was upheld by
25 the Colorado Supreme Court, it was eventually

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1 overturned by the Tenth Circuit in 2008. The state
2 legislature then revised the higher education
3 scholarship statutes to bring them in line with modern
4 First Amendment laws against government discrimination
5 among religions.

6 Today, Colorado has many different
7 scholarship programs from kindergarten through
8 graduate school in which religious schools may
9 participate without discrimination. And except for
10 the unusual litigation involving Douglas County, none
11 of these programs have been accused of violating the
12 No Sectarian Aid Clause.

13 The Advisory Committee's report does not
14 make any conclusions about whether scholarship voucher
15 programs at any level of education are or are not a
16 good idea. Many public commenters wanted us to decide
17 this issue, but this kind of decision is beyond our
18 Committee's expertise.

19 As we recognize, and this was something
20 that was shared across the ideological spectrum of our
21 experts, there is a serious problem for some students,
22 including minorities and people of disadvantaged
23 socioeconomic background, being trapped in low quality
24 public schools.

25 But the Committee felt that how to solve

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1 that problem was beyond our expertise and should be
2 addressed by school boards and the legislature based
3 on their own evaluations of the conflicting social
4 science evidence.

5 Our conclusions in the report summarize
6 the history of discrimination in the application of
7 the No Sectarian Aid Clause, but we did not recommend
8 that the clause be repealed, nor did we declare that
9 the clause itself is a violation of the First
10 Amendment. A repeal decision will be up to the people
11 of Colorado and not a federal committee, and the First
12 Amendment is up to the U.S. Supreme Court.

13 So our report is not a call to action.
14 Rather, it is to provide public education about
15 historical and recent religious discrimination in
16 Colorado. Thank you.

17 CHAIR LHAMON: Thank you so much for the
18 presentation. I'll open for questions from my fellow
19 Commissioners.

20 Mr. Kopel, but in your findings, you all,
21 your committee took the, I think, unusual step of
22 clarifying what the Committee does not make finding
23 about in, I think, three instances. And I appreciated
24 that clarity as you were drawing distinctions in the
25 report and the detailed coverage of the topic in the

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1 report.

2 MR. KOPEL: Thank you. It was, we had to
3 resist quite mightily efforts from those people who
4 thought that we were the people who were going to
5 decide whether vouchers were a good idea or not. And
6 obviously there's a lot of social science evidence on
7 that, lots of conflict on that.

8 And we are not education experts, we're
9 concerned citizens about civil rights and trying to
10 stick to our knitting and not exceed our jurisdiction
11 or our knowledge.

12 CHAIR LHAMON: Or leave time for another
13 report.

14 MR. KOPEL: Yes.

15 CHAIR LHAMON: Any other questions from
16 other Commissioners? Mr. Kopel, thank you so much for
17 the presentation. I hope you will thank your fellow
18 Committee members for their work and for their service
19 and yours on the Colorado State Advisory Committee.
20 And thank you for taking the time to speak with us
21 today.

22 MR. KOPEL: Thank you.

23 CHAIR LHAMON: Sure. We'll now move to
24 our amended item on the agenda, a motion from
25 Commissioner Yaki on the statement timelines for Stand

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1 Your Ground [report].

2 **V. MOTION FROM COMMISSIONER YAKI TO AMEND**

3 **STAND YOUR GROUND TIMELINE**

4 CHAIR LHAMON: Commissioner Yaki, you want
5 to make your motion?

6 COMMISSIONER YAKI: Yeah. Just a second.

7 I'd like to make a motion to extend the timelines on
8 the Stand Your Ground report, with the statements due
9 on Friday, November 30; rebuttals due Wednesday,
10 January 9; notice of surrebuttal due on January 16,
11 2019; and finally surrebuttal text due on Wednesday,
12 January 23.

13 This is due in part to try and alleviate
14 the writing stress on a number of us, as we have all
15 these other reports due at the same time.

16 CHAIR LHAMON: Thank you. Is there a
17 second?

18 COMMISSIONER NARASAKI: I'll second,
19 Commissioner Narasaki.

20 CHAIR LHAMON: Thank you. Is there any
21 discussion? As we open the floor up for discussion,
22 I'll note that Commissioner Heriot unfortunately had
23 to leave to take a train unexpectedly. But I
24 understand from earlier conversations that
25 Commissioner Heriot does not object to this motion to

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1 extend the deadline. Any other discussion on this
2 motion?

3 If not, I'll call the question and take a
4 roll call vote. Commissioner Kirsanow, how do you
5 vote?

6 COMMISSIONER KIRSANOW: Yes.

7 CHAIR LHAMON: Commissioner Kladney, how
8 do you vote?

9 COMMISSIONER KLADNEY: Yes.

10 CHAIR LHAMON: Commissioner Narasaki?

11 COMMISSIONER NARASAKI: Yes.

12 CHAIR LHAMON: Commissioner Yaki?

13 COMMISSIONER YAKI: Aye.

14 CHAIR LHAMON: Vice Chair Timmons-Goodson?

15 VICE CHAIR TIMMONS-GOODSON: Yes.

16 CHAIR LHAMON: And I vote yes. The motion
17 passes unanimously. Next, we'll hear from Staff
18 Director Mauro Morales for the monthly Staff
19 Director's report.

20 **VI. MONTHLY STAFF DIRECTOR'S REPORT**

21 STAFF DIRECTOR MORALES: Thank you, Madam
22 Chair. I have nothing more to add to what's already
23 contained in the report, so I won't go into any
24 specific details. I just want to thank the staff
25 publicly for all the outstanding work they did on

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1 getting the statutory enforcement report out and the
2 other reports.

3 We're, you know, General Counsel's office
4 and the our Office of Civil Rights Enforcement, as
5 well as our administrative services offices and the
6 entire Commission staff have been doing outstanding
7 work, and I really appreciate that, so I want to
8 acknowledge all that.

9 As always, I'm available to discuss any
10 specific matter with any Commissioner or Commissioners
11 if something comes to their attention. With that, I
12 conclude. Thank you, Madam Chair.

13 CHAIR LHAMON: Thank you so much. If
14 there's nothing further, I -- oh, Commissioner
15 Narasaki.

16 COMMISSIONER NARASAKI: So I wanted to
17 thank the Staff Director and David Mussatt for the
18 report that we got on the regional program monthly
19 report, although when I print it out, it's really
20 tiny. So, but the information was very, very useful,
21 and I want to commend all of the amazing work that I
22 know staff are doing.

23 I recognize that we're still understaffed,
24 and the good news is that we got all of the Committees
25 appointed and the challenges trying to make sure that

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1 they all have the staff support they need. So just
2 wanted to note my appreciation, and look forward to
3 the SAC reports that will be coming up. Thank you.

4 CHAIR LHAMON: If there's nothing further,
5 I'll adjourn the meeting at 10:51 a.m. Eastern
6 Daylight Time. Thank you all.

7 (Whereupon, the above-entitled matter went
8 off the record at 10:51 a.m.)

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