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U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

+ + + + +

FRIDAY, DECEMBER 7, 2018

+ + + + +

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

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STAFF PRESENT:

LASHONDA BRENSON

KATHERINE CULLITON-GONZALEZ

BARBARA DE LA VIEZ

PAMELA DUNSTON, Chief, ASCD

YOURSAL ELKHAITA

ALFREDA GREENE

TINALOUISE MARTIN, OM

MARTHA MARR

WARREN ORR

SARALE SEWELL

JUANDA SMITH

BRIAN WALCH

MARIK XAVIER-BRIER

MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

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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 December 7, 2018. The meeting takes place at the Commission's headquarters, located at 1331 Pennsylvania Avenue Northwest, Washington, D.C.

I'm Chair Catherine Lhamon and the Commissioners who are present in addition to me are Commissioner Adegbile, Commissioner Heriot, Commissioner Kirsanow, and Commissioner Kladney.

On the phone, please confirm that you are on the line after I say your name. I believe we have Commissioner Yaki?

COMMISSIONER YAKI: Here.

CHAIR LHAMON: And Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: Thank you. I understand Commissioner Narasaki will be joining us later and she'll let us know when she's on the line. A quorum of the Commissioners is present. Is the court reporter present?

COURT REPORTER: Here.

CHAIR LHAMON: Thank you. Is the Staff

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1 Director present?

2 STAFF DIRECTOR MORALES: Present.

3 CHAIR LHAMON: Thank you. The meeting now
4 comes to order.

5 **I. APPROVAL OF AGENDA**

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

8 COMMISSIONER KLADNEY: I move to approve
9 the agenda.

10 CHAIR LHAMON: Thank you.

11 VICE CHAIR TIMMONS-GOODSON: This is Vice
12 Chair Timmons-Goodson, so moved.

13 CHAIR LHAMON: Thank you. I'm going to
14 treat that as a motion and a second. I'll begin the
15 call for amendments with several of my own.

16 First, I move to amend to take off the
17 presentation from our Connecticut State Advisory
18 Committee Chair, who unfortunately could not make it
19 for today's meeting. We hope to hear from him in
20 January.

21 Second, I move to amend for consideration
22 of a statement I propose on the Commission's
23 legislative and oversight priorities for the new
24 Congress.

25 And third, I move to amend for

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1 consideration of several statements that Commissioner
2 Narasaki will introduce, but she could not be here
3 with us at the outset of the meeting.

4 Those items are for consideration of a
5 letter to HHS [Department of Health and Human
6 Services] regarding the definition of sex; a letter to
7 DHS [Department of Homeland Security] for public
8 comment submission on the public charge proposed rule;
9 and third is a statement on citizenship.

10 Is there a second for my amendments?

11 COMMISSIONER KLADNEY: I so move, second.

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

14 COMMISSIONER YAKI: I have an amendment.

15 CHAIR LHAMON: Commissioner Yaki, go ahead.

16 COMMISSIONER YAKI: Yes, I would just like
17 to add to the agenda an item to change the dates for
18 the statements due on the Stand Your Ground Report.

19 CHAIR LHAMON: Is there a second?

20 COMMISSIONER KLADNEY: Kladney, I'll
21 second.

22 CHAIR LHAMON: Thank you. Are there any
23 other amendments? If there's no further amendments,
24 let's vote to approve the agenda as amended. All
25 those in favor, say aye.

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(Chorus of ayes.)

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

II. BUSINESS MEETING

PRESENTATION BY RHODE ISLAND ADVISORY COMMITTEE

CHAIR ON THE COMMITTEE'S RECENTLY RELEASED REPORT, PAYDAY LENDING IN RHODE ISLAND

CHAIR LHAMON: We'll now hear over the phone from our Rhode Island Advisory Committee Chair, Jennifer Steinfeld, on the Committee's recently report titled Payday Lending in Rhode Island. Chair Steinfeld, we look forward to hearing from you for ten minutes.

MS. STEINFELD: Wonderful, thank you so much for having us speak today and for all of the support that you've given to this effort. I'm really pleased to be able to give you an overview of how we arrived at our report.

But first, I want to thank Barbara De La Viez and Evelyn Bohor, and an intern over the summer, Nicole Carroll, who were incredibly instrumental in preparing this report and in helping our Committee come together.

We were reappointed just over a year ago and have been lucky to be very active since that time.

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1 We quickly realized in our reconstitution that we had
2 an opportunity to have a substantial local impact on
3 an important public policy issue around payday
4 lending.

5 There was legislation that had been
6 pending for several years, Rhode Island legislative
7 consideration is an annual consideration, so
8 legislation is reintroduced annually in January.

9 And there had been no motion, but there
10 was a piece of pending legislation in the spring of
11 this year that was some energy behind it and needed an
12 extra boost.

13 So, we were able to convene a hearing on
14 April 27, 2018, where we brought together members of
15 the public. And that was our first in-person meeting
16 since our reconvening.

17 We had invited representation from a wide
18 variety of stakeholders, for several panels, speaking
19 about the issue of payday lending in the state of
20 Rhode Island.

21 And I'm sure you've all read the report,
22 but we invited representations from the payday lending
23 industry, their lobbyists, as well as some legislators
24 who had been opposing the legislation, without any
25 response, which Barbara De La Viez has told me is very

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1 unusual for her, as a federal official, to have no
2 response to her calls.

3 We had unanimous information that not only
4 articulated the harm of payday lending, which I think
5 we were all clear about, but also, really articulated
6 clearly the explicit targeting of both low-income
7 people and people of color.

8 And most compelling to me was a map that
9 was brought to us by a local advocacy organization -
10 the Economic Progress Institute- that showed an
11 overlay of maps of the census tracts with the highest
12 proportion of the African American community in our
13 state, that overlapped consistently with the map of
14 the highest concentration of payday lenders in the
15 state.

16 So, clearly a significant effort on behalf
17 of the lending industry to really look at low-income
18 people, looking at particularly low-income people of
19 color.

20 Another interesting finding was that one
21 of the arguments that's often made against payday
22 lending is that it serves an important service for
23 people who don't have access to traditional banking.

24 But another finding that we had was that,
25 in fact, to receive a payday loan, you must have a

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1 bank account and a job in order to get a payday loan.

2 So, that's actually not true, it's not serving an un-
3 banked industry.

4 We also found that there are several local
5 alternatives, including a local credit union that
6 provides emergency loans and a local CDFI, Community
7 Development Financial Institution, that offers lower
8 interest loan alternatives.

9 So, we were able to pull together a
10 summary of our findings to do advocacy in support of
11 that legislation in the spring and two of our members
12 met with the Speaker of the House, who has been a
13 consistent opponent of the limitations.

14 So, essentially payday lenders have a
15 carve-out from the state usury laws. And so, there's
16 been legislation to try to put them back into the
17 state usury statute, which limits the interest rate, I
18 think at 28 percent.

19 And our members found not only did they --
20 they expected to have a very short, cordial meeting,
21 where they were sort of given the brush-off, but they
22 actually had an incredibly hostile 20-minute
23 conversation, where the Speaker of the House rejected
24 any findings that there was a civil right violation or
25 that these loans created debt traps, despite evidence

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1 to the contrary.

2 So, we then moved tactics. He was up for
3 reelection this fall, he was reelected in a very close
4 race, and was just reelected as the Speaker of the
5 House. So, it's unclear what the future of
6 legislation will be this year.

7 But two of our members on our Advisory
8 Committee are also part of an advocacy effort on this
9 issue. And we'll be meeting next week, so they'll be
10 updating us on what we can do for the 2019 legislative
11 session.

12 Technically, our work on this issue
13 concluded with the issuance of our report, but we just
14 had a letter from Chair Lhamon go out to legislators
15 outlining the recommendations that we made around
16 payday loan alternatives, recommending legislative
17 action to restrict the maximum interest rate to 36
18 percent APR and this is a recommendation to get the
19 payday lenders back into alignment with the state
20 usury laws.

21 So, stay tuned for additional advocacy on
22 this important issue that's certainly impacting our
23 community quite significantly. And I'll be happy to
24 take any questions.

25 CHAIR LHAMON: Thanks so much, Chair

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1 Steinfeld. I'll open for questions from my fellow
2 Commissioners. I see Commissioner Kladney has a
3 question.

4 COMMISSIONER KLADNEY: I just would like to
5 make a statement. I thought the report was well done.

6 We had proposed at one time, in my office, to do a
7 briefing here on payday lending and we subsequently
8 didn't do it.

9 But what our research found, and I don't
10 know if -- I don't think Rhode Island has very many
11 military bases. But where there are military bases,
12 these payday lending stores line the entranceway to
13 the main gate, because a lot of soldiers and sailors
14 use those services.

15 And as a result, if they miss a payment,
16 the payday lending place can just get a hold of their
17 commanding officer and they withhold from their pay.
18 And it's really been quite a detriment to military
19 members.

20 I just wanted to make that statement, but
21 I thought your report was excellently done. Thank
22 you.

23 MS. STEINFELD: Thank you. We actually did
24 reach out, we have a naval base and the Naval War
25 College is located here in Rhode Island.

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1 We did reach out to military and the
2 statement that they gave us is that there actually is
3 a federal regulation that is now no longer allowing
4 payday lenders to -- they consider it to be a troop
5 insecurity issue to loan to active duty military.

6 So, it's quite a significant issue for the
7 military and they've taken action as well, which I
8 think strengthens the power of our report.

9 COMMISSIONER KLADNEY: Thank you.

10 CHAIR LHAMON: Thank you. No questions?

11 COMMISSIONER HERIOT: I guess I have some
12 questions.

13 CHAIR LHAMON: Commissioner Heriot?

14 COMMISSIONER HERIOT: Thank you for that
15 presentation. I was just working out what 26 percent
16 would be on a \$200 loan.

17 MS. STEINFELD: I'm sorry, it's actually 35
18 percent, 36 percent.

19 COMMISSIONER HERIOT: It's written here as
20 36, but I don't think it's going to make any
21 difference to my point. And that's less than \$3 on a
22 two-week loan, which is probably too little to make
23 processing worth it.

24 One response that a payday lender could
25 have to that would be to decline to make tiny loans

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1 and make larger ones, where the interest rate might
2 pay at least the processing costs.

3 And they might demand of people who are
4 desperate for the money that they borrow more than
5 they would ordinarily need. Is this something that
6 you gave some thought to?

7 MS. STEINFELD: The information that we
8 have is that, actually, the business model does not
9 make a profit on the initial loan. It requires that
10 the -- the business model actually requires the debt
11 trap to be viable.

12 So, it requires people to take multiple
13 loans out and pay an initiation fee, as well as the
14 interest rate, over a period of time. And the model
15 requires around four loans. Most people we found were
16 taking around six to eight loans in order to be able
17 to pay it back.

18 It's very unlikely if, in one pay period
19 you don't have, let's say \$500 to fix your car, that
20 you have an extra \$500 in the next pay period, that
21 you have earnings in excess of the loan amount.

22 And so, really, this model is about
23 keeping people in multiple loans, which is in
24 violation, I mean, they're not technically in
25 violation, but in violation of the spirit of the state

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1 usury laws as well.

2 COMMISSIONER HERIOT: Yes, but that just
3 makes my point --

4 MS. STEINFELD: So, there are --

5 COMMISSIONER HERIOT: -- all the more
6 telling. If that's the business model, then the
7 loan's going to be larger now. And so, keeping the
8 interest rate down will actually make things worse,
9 rather than make them better.

10 MS. STEINFELD: Well, I think our hope is
11 that there will be an increase in alternative lending
12 sources, including, as I said, there is a local credit
13 union and a local CDFI that offer --

14 COMMISSIONER HERIOT: Again, they're going
15 to want --

16 MS. STEINFELD: -- emergency loans and
17 those are --

18 COMMISSIONER HERIOT: -- the larger loans.
19 They're going to want the larger loans, which is
20 going to make --

21 MS. STEINFELD: No, no, no --

22 COMMISSIONER HERIOT: -- the matter worse
23 rather than better.

24 MS. STEINFELD: -- they're limited to --

25 COMMISSIONER HERIOT: Things exist because

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1 --

2 CHAIR LHAMON: Commissioner Heriot?

3 MS. STEINFELD: They're limited to --

4 COMMISSIONER KLADNEY: Madam Chair, can
5 people go one at a time?

6 COMMISSIONER HERIOT: -- there's a market
7 for them.

8 CHAIR LHAMON: Commissioner Heriot, we
9 should let the Chair of the SAC speak, at least allow
10 for a transcript.

11 MS. STEINFELD: Yes, I apologize. Those
12 emergency loans are actually limited, in one case, to
13 \$500, and in another case, to \$750.

14 They are quite small and they are not
15 designed -- they're a break-even product for the
16 lenders. These are services that are being offered to
17 the community.

18 One of the lenders is a credit union and
19 they're offering it to their members, because they
20 were noticing that a number of their members were
21 having their bank accounts closed due to overdraft, and
22 the overdraft is being done by the payday lenders.

23 And so, they started offering this product
24 to their members, because they spoke to their members
25 who actually don't want to see their bank accounts

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1 shut down, but were in a short-term capital need.

2 And the local CDFI is mission-oriented
3 towards reducing poverty by reducing debt traps. And
4 so, they too offer emergency loan product. I should
5 say, I'm on the board of that organization, I'm the
6 treasurer of the board of that organization.

7 And that's a money loser for the CDFI, but
8 it's offered as a mission-oriented product. The loan
9 origination does cost more money than the loan
10 generates.

11 COMMISSIONER HERIOT: What organization are
12 you on the board of?

13 MS. STEINFELD: The Capital Good Fund,
14 which is a Community Development Financial
15 Institution.

16 COMMISSIONER HERIOT: And is that a paid
17 position?

18 MS. STEINFELD: No.

19 COMMISSIONER HERIOT: Is anybody on the SAC
20 in a paid position from that?

21 MS. STEINFELD: No.

22 COMMISSIONER HERIOT: You had mentioned two
23 members are interested in advocacy here, is there
24 someone else from the organization that's on the SAC?

25 MS. STEINFELD: Not from that organization.

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1 There are two members, one from the State Council of
2 Churches, which is very engaged in advocacy around
3 this, and one from an organization called
4 NeighborWorks, which is mostly focused on housing, but
5 also is working on this issue as --

6 COMMISSIONER HERIOT: Is either of those
7 positions --

8 MS. STEINFELD: -- predatory, as well --

9 COMMISSIONER HERIOT: -- a paid position?

10 CHAIR LHAMON: Commissioner Heriot, I'm
11 going to ask you again to let Chair Steinfeld speak
12 before you speak so that we can have a clear
13 transcript.

14 MS. STEINFELD: Yes, those are their
15 professional positions, I believe both.

16 COMMISSIONER HERIOT: Okay. And which
17 members are those?

18 MS. STEINFELD: That's Member Morriseau and
19 Member Anderson.

20 COMMISSIONER HERIOT: From which
21 organizations? Which one goes with which?

22 MS. STEINFELD: Member Anderson from the
23 State Council of Churches and Member Morriseau from
24 NeighborWorks Blackstone Valley.

25 COMMISSIONER HERIOT: I guess I would

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1 continue on this point that, like, you may be making
2 this worse.

3 You're talking about people who are
4 desperate for credit. And you can dry up that credit
5 or you can make that amount larger. Drying up that
6 credit may drive them to other acts of desperation.

7 MS. STEINFELD: That's certainly possible,
8 but we don't think that it should be allowable to
9 create something that is so predatory on people, when
10 there are alternative sources available.

11 CHAIR LHAMON: Chair Steinfeld, I wanted to
12 follow up on that question. This is Chair Lhamon.

13 The report notes that you have a set of
14 recommendations for what Rhode Island should do to
15 investigate the underlying financial circumstances
16 that leave Rhode Islanders, and particularly Rhode
17 Islanders of color especially, in need of the credit
18 advances that payday loans provide.

19 And you also mentioned that your State
20 Advisory Committee plans, next week, to discuss
21 possible next steps following from this report.

22 I wonder if one possibility for your
23 Advisory Committee might be to investigate those
24 underlying reasons and to address the civil rights
25 issues that follow from that level of financial

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1 insecurity for Rhode Islanders.

2 MS. STEINFELD: Yes, absolutely. And it is
3 certainly something that we're interested in looking
4 at and just seeing if there are other areas where our
5 Commission can investigate potential civil rights
6 violations that lead to what we see as a significant
7 income disparity based on race.

8 CHAIR LHAMON: I was very taken with the
9 thoroughness of this report. And I also appreciate
10 your noting at the beginning of your presentation that
11 your Advisory Committee has seized on your
12 reappointment as a moment to deliver results from your
13 expertise.

14 And so, thank you for your productivity
15 and also for the detail in this report. I generally
16 am not, and in this instance am not, recommending a
17 particular topic for any State Advisory Committee to
18 take up.

19 I was very taken with the quantum of
20 information that you took in on this topic and the
21 kinds of civil rights issues that could follow in
22 addition to the specific recommendations about payday
23 loan caps that your report includes.

24 COMMISSIONER YAKI: I have a question to
25 ask. I have a question, Madam Chair.

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1 CHAIR LHAMON: Commissioner Yaki, go ahead.

2 COMMISSIONER YAKI: Yes. Thank you very
3 much for this report. Have -- did your Committee
4 review at all the proposed payday regulations proposed
5 by the CFPB and did they have any response to the fact
6 that the CFPB is now indicated it's going to
7 reconsider those rules that were enacted in the last
8 year of the Obama Administration?

9 MS. STEINFELD: We did have somebody
10 present from the CFPB and we do have some information.
11 We have not considered it in light of the
12 reconsideration. However, I will say that the
13 reconsideration is largely due to the question that
14 was brought up by a member around access to credit.

15 And knowing that in our state, there are
16 alternative credit sources, really makes that be a
17 specific recommendation for our state, whereas, if
18 there was not alternative access to capital, we might
19 have a different finding.

20 COMMISSIONER YAKI: Got it, thank you.

21 COMMISSIONER ADEGBILE: Madam Chair?

22 CHAIR LHAMON: Commissioner Adegbile?

23 VICE CHAIR TIMMONS-GOODSON: Madam Chair,
24 this is Vice Chair Timmons-Goodson, I have a brief
25 question.

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1 CHAIR LHAMON: Go ahead, Vice Chair.

2 VICE CHAIR TIMMONS-GOODSON: Yes. I see in
3 the report where you discuss the adverse effect that
4 payday loans have on the state economy.

5 I thought that was interesting, because
6 rarely do we think about the effect on the state's
7 economy, we usually focus on the individual. Would
8 you mind saying a word or two more about the adverse
9 effect on Rhode Island's economy?

10 MS. STEINFELD: Sure. Essentially, we have
11 a significant enough portion of our population,
12 especially our low-income population, who, rather than
13 spending their income generating sales or et cetera,
14 they're spending their income paying back payday
15 lenders.

16 And the payday lenders are not located in
17 Rhode Island, that's not money that stays locally.
18 You can make an argument that there are some
19 employees, et cetera, who work locally, but that tends
20 to be very small proportion of the money that's
21 actually staying as part of our local economy.

22 So, it's essentially taking money from our
23 lower income folks, many of whom are receiving state
24 subsidies as well, and it's extracting that out of our
25 state economy and moving that to national corporations

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1 and, therefore, not generating wealth.

2 In addition to more intangible costs of
3 stress, anxiety, et cetera, for people who get stuck
4 in this debt trap.

5 VICE CHAIR TIMMONS-GOODSON: Thank you very
6 much.

7 MS. STEINFELD: Sure.

8 CHAIR LHAMON: Commissioner Adegbile?

9 COMMISSIONER ADEGBILE: Yes. Thank you
10 very much for this report. I was just wondering if
11 the industry has explained or offered any explanation
12 about why the phenomenon that you describe on Page 12
13 exists?

14 On Page 12 of the report, you write, when
15 comparing neighborhoods with the same median income,
16 neighborhoods with significant black and Latino
17 populations had a 70 percent higher concentration of
18 payday loan stores than white neighborhoods at the
19 same income level.

20 Have we heard from the industry about what
21 the rationale of that economic model is?

22 MS. STEINFELD: We did not even get the
23 courtesy of a return phone call turning down an
24 opportunity to present at our briefing. So, no, we
25 have not heard any response from the industry.

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1 COMMISSIONER ADEGBILE: Has anybody
2 elsewhere offered a rationale about why that pattern
3 would exist?

4 MS. STEINFELD: The only rationale that we
5 have seen is from people with a particular advocacy
6 position, but the argument is that, based in
7 historical inequality in terms of access to credit and
8 suspicion or doubt about the ability of banks to serve
9 people, as well as a history of red-lining, and lack
10 of access to actual lending institutions in low-income
11 communities.

12 COMMISSIONER ADEGBILE: Thanks. One other
13 question, on the points that Commissioner Heriot
14 raised, do financial institutions have an independent
15 duty when they're lending to figure out whether or not
16 somebody whom they're lending to has the ability to
17 repay a loan?

18 MS. STEINFELD: Traditional lenders do have
19 that requirement, payday lenders do not.

20 COMMISSIONER ADEGBILE: And so, would it
21 necessarily be the rational choice of a lender who
22 determines that they can't lend a low amount of money
23 to lend more money, a higher sum of money, in the way
24 that Commissioner Heriot posits?

25 MS. STEINFELD: Again, for a traditional

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1 banking institution, certainly not. For a payday
2 lender, they essentially are doing an unsecured loan
3 and so, they would have -- it would depend on whether
4 the business model made sense for them, I guess,
5 whether they have a higher default rate than makes it
6 worthwhile.

7 COMMISSIONER ADEGBILE: Thanks very much.

8 CHAIR LHAMON: Hearing no further
9 questions, Ms. Steinfeld, thank you so much for your
10 service and your leadership on the Rhode Island State
11 Advisory Committee and for taking the time to speak
12 with us today. We very much appreciate your
13 presentation.

14 MS. STEINFELD: Thank you so much.

15 **PRESENTATION BY VERMONT ADVISORY COMMITTEE CHAIR ON**
16 **THE COMMITTEE'S RECENTLY RELEASED ADVISORY**
17 **MEMORANDUM, HOUSING DISCRIMINATION IN VERMONT, A**
18 **HANDSHAKE AND A SMILE**

19 CHAIR LHAMON: And we'll move to our next
20 item on the agenda, which is to hear from our Vermont
21 Advisory Committee Chair, Curtiss Reed, Junior, on the
22 Committee's recently released Advisory Memorandum
23 titled Housing Discrimination in Vermont, a Handshake
24 and a Smile. Chair Reed, we'll enjoy hearing from you
25 for ten minutes.

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1 MR. REED: Good morning from yet another
2 sub-freezing day in Vermont.

3 (Laughter.)

4 MR. REED: My speech may falter here and
5 there as I'm still recovering from lingering
6 respiratory issues due a bout of bronchitis. So, this
7 will be a slow presentation.

8 On behalf of all the members of the
9 Vermont State Advisory Committee, I thank the
10 Commission for the opportunity to brief the
11 Commissioners on the housing discrimination in
12 Vermont.

13 In addition, we wish to thank the staff of
14 the Commission's Eastern Regional Office, particularly
15 Barbara De La Viez for decades long support and
16 counsel to the Vermont SAC.

17 Vermont, by most any definition is a small
18 place, whether measured by land mass, population, or
19 productivity.

20 Our population of less than 624,000
21 residents, 10.3 percent of us are disabled, 5.5
22 percent of us or ethnic or racial minorities, and 4.5
23 percent of us are foreign-born, according to the
24 latest census data.

25 We live on a human scale, where there is

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1 seemingly a one-degree separation between any two
2 residents. Our tendency is not to fight with our
3 neighbor, lest we would need them to push our car out
4 of the snowbank during the winter or muddy road during
5 mud season.

6 And while our numbers are small, the
7 impact of civil rights abuses on those of us in
8 protected categories looms forever large.

9 Our memorandum titled Housing
10 Discrimination in Vermont, a Handshake and a Smile,
11 reflects on the one hand, a culture where everyone
12 needs to get along.

13 However, on the other hand, landlords and
14 property owners who do not fully understand their
15 legal obligations perpetuate housing discrimination,
16 particularly for those of us with disabilities, ethnic
17 or racial minorities, or foreign-born.

18 Since our briefing, Vermont, as part of
19 its obligation to affirmatively further fair housing,
20 last prepared its required analysis of impediments in
21 2017.

22 This 2017 update to the 200-page 2012
23 report found that 46 Vermont fair-housing complaints
24 were filed with federal or state agencies between
25 January 2013 and July 2016.

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1 Over half of these complaints involved
2 discrimination on the basis of disability, while the
3 rest involve discrimination on the basis of familial
4 status or presence of minor children, race, color, and
5 sex.

6 In additional, 189 people called Legal Aid
7 and made a housing discrimination complaint with
8 Vermont Legal Aid between March 2015 and November
9 2016.

10 The majority of these complaints, 68
11 percent, were related to disability discrimination.
12 The remaining complaints involved discrimination based
13 on other protected categories.

14 The analysis of impediments report found
15 that discrimination based on disability, familial
16 status, and other protected categories continues to
17 occur in Vermont.

18 The report also found that the supply of
19 affordable housing, especially affordable and
20 accessible housing, in Vermont is inadequate.

21 Based on the information gathered by this
22 review, the Committee believes that housing
23 discrimination likely persists in Vermont. In part,
24 because many landlords do not fully understand their
25 legal obligations.

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1 It is also clear that the lack of
2 affordable housing in the state makes it even harder
3 for individuals of color and individuals with
4 disabilities in Vermont, who are often also low-
5 income, to find housing.

6 At the same time, the Committee's inquiry
7 into housing discrimination has been impeded by its
8 inability to independently investigate complaints.

9 For that reason, it is difficult for the
10 Committee to complete a meaningful assessment of
11 whether and the extent to which Vermont residents
12 seeking housing are discriminated against based on the
13 basis of race, disability, color, national origin,
14 sex, religion, familial status, age, marital status,
15 sexual orientation/gender identity, and the receipt of
16 public assistance.

17 Based on available literature and
18 testimony at the briefing, the Committee acknowledges
19 persistence of housing discrimination in the state and
20 its effect on Vermont residents of color and
21 individuals with disabilities.

22 The Committee notes that additional
23 training and education for landlords and other housing
24 professionals regarding their legal obligations under
25 the Fair Housing Act and the Vermont Fair Housing Act

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1 has the potential to reduce housing discrimination in
2 Vermont.

3 It may also be beneficial to expand the
4 efforts to inform tenants of their rights under the
5 laws. In other states, this has been accomplished
6 through the use of flyers and bus advertisements that
7 educate readers on types of prohibited discrimination.

8 The Committee also identified a need for a
9 housing discrimination hotline that would allow
10 landlords and tenants to access information on what
11 practices are discriminatory.

12 I thank you for suffering through my
13 halting voice, but I'm open to taking questions.
14 Thank you.

15 CHAIR LHAMON: Chair Reed, thank you very
16 much for your presentation, and also, thank you for
17 sticking with us notwithstanding illness. We very
18 much appreciate it.

19 I'll open for questions from my fellow
20 Commissioners. While people are formulating thoughts,
21 I'll jump in with a few questions of my own.

22 Chair Reed, I notice that the penultimate
23 page of your report, a reference to the analysis of
24 the impediments submitted in 2017 from the state, and
25 your description of that notes that there were 46 fair

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1 housing complaints filed with federal and state
2 agencies in a three-year period that report on the
3 analysis of impediments, and separately, that there
4 were 189 people who had called the Legal Aid Office in
5 Vermont in, let's say, a six-month period, from March
6 2015 to November of 2016.

7 I wonder if you and your fellow Committee
8 members were able to form views about what accounts
9 for the difference in contacts between a nonprofit and
10 government agencies with respect to fair housing, and
11 if you could share thoughts about what may account for
12 the difference in points of contact on what your
13 Committee describes as a persistent concern in the
14 state.

15 MR. REED: No, there was no particular
16 conversation or discussion about the difference in the
17 two.

18 One might conjecture that, given that
19 Vermont Legal Aid has sort of a much broader contact
20 out with community, they would be the natural point
21 for community members to go to, as a known entity.

22 CHAIR LHAMON: And so, that would
23 underscore your point about the value of notice to
24 tenants about their rights, as one of the
25 recommendations that you have on the last page of the

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1 report, is that right?

2 MR. REED: Yes, that is correct.

3 CHAIR LHAMON: Thank you. Also, as you may
4 know, the Commission is in the middle of an ongoing
5 investigation about the effectiveness of federal civil
6 rights enforcement across issue areas and agencies.

7 And so, obviously, one of the issues that
8 we're investigating is fair housing and fair housing
9 enforcement.

10 And I note very strong parallels between
11 the information in your Committee's report and
12 information that we took in from the HUD [Department
13 of Housing and Urban Development] representative at
14 our briefing about the challenge in addressing the
15 volume of fair housing need in this country, with
16 limited ability to investigate complaints and identify
17 the scope of need.

18 And I wonder if you have thoughts about
19 what it would take to be able to evaluate what actual
20 circumstances are on the ground, in addition to the
21 points of contact that people make with federal
22 agencies, state agencies, and/or nonprofits.

23 MR. REED: There's -- in terms of improving
24 service, it's really a function of to what extent is
25 one able to be involved in the community, with the

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1 community.

2 I think federal agencies have more
3 constraints or may perceive they have more
4 constraints, to get out, to visit and engage community
5 groups in conversations about what the needs are in
6 their particular communities, not only around housing,
7 but in terms of law enforcement, in terms of
8 education.

9 That local groups have a much greater
10 capacity, I think, for going to where community
11 members are and listening with a critical ear, that
12 allows community members to say, let's go to the
13 nonprofit or state agency, as opposed to a federal
14 agency.

15 CHAIR LHAMON: Thank you. I have just one
16 more question, and that is, at Page 4 of your report,
17 you note that the Champlain area NAACP received 50
18 complaints regarding the availability of housing in
19 the 11-month that proceeding your briefing, which was
20 in 2015.

21 And I wonder if you had views about the
22 reliability of the state's analysis of impediments
23 submitted in 2017 not referring to those kinds of
24 complaints, specifically to that NAACP or more
25 generally, to complaints to other nonprofits related

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1 to fair housing issues?

2 Is that an oversight that is surprising to
3 you or is that something that you would not consider
4 an oversight at all?

5 MR. REED: It's not surprising. But also,
6 keep in mind that, when people go to the NAACP,
7 they're typically going with not just one particular
8 complaint, but also sort of multiple complaints, out
9 of which NAACP is teasing out the data specific to
10 housing.

11 But that there are issues around
12 discrimination in the workplace or the inability to
13 get a job, education, and so, the -- places like the
14 NAACP, whether it's in Champlain Valley or Rutland or
15 in Southeastern Vermont, community members come in
16 with a litany of issues.

17 And it's difficult for, difficult but not
18 necessarily impossible for, federal agencies just to
19 narrow-in on the housing issue in and of itself.
20 Because I think there's a tendency not to want to hear
21 what the other sort of complaint areas are, that they
22 just want you to focus on housing or education or
23 workplace discrimination.

24 But unfortunately, or maybe fortunately,
25 the way community members' minds work is a much more

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1 holistic fashion, in terms of the interconnectedness
2 of these various forms of discrimination and
3 harassment.

4 CHAIR LHAMON: Thank you very much, Chair
5 Curtiss. Are there questions from other
6 Commissioners? Hearing none, I will thank you very
7 much and we can move on to our next item.

8 But first, thank you for your service and
9 for your leadership on the Vermont State Advisory
10 Committee and for the Advisory Memorandum that you
11 shared with us today, and thank you again for
12 presenting notwithstanding illness, we appreciate it.

13 MR. REED: Thank you to you as well.

14 COMMISSIONER NARASAKI: Madam Chair?

15 CHAIR LHAMON: Yes?

16 COMMISSIONER NARASAKI: Madam Chair, this
17 is Commissioner Narasaki, I just wanted to let you
18 know that I have joined before the Vermont Chair begin
19 his report.

20 CHAIR LHAMON: Welcome, we're delighted to
21 have you.

22 **DISCUSSION AND VOTE ON THE DISCOVERY PLAN, OUTLINE,**
23 **AND TIMELINE FOR THE COMMISSION'S PROJECT ON WOMEN**
24 **IN PRISON**

25 CHAIR LHAMON: So, our next item is a

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1 discussion and vote on the discovery materials, namely
2 the discovery plan, outline, and timeline for the
3 Commission's project on women in prison. To begin
4 discussion, is there a motion?

5 COMMISSIONER KLADNEY: I move we adopt the
6 plan.

7 CHAIR LHAMON: Thank you. Is there a
8 second?

9 COMMISSIONER ADEGBILE: Second.

10 VICE CHAIR TIMMONS-GOODSON: Madam Chair, I
11 second.

12 CHAIR LHAMON: Terrific, thank you.
13 Commissioner Kladney, as the sponsor of this project,
14 would you begin our discussion?

15 COMMISSIONER KLADNEY: My office has been
16 working closely with OCRE [Office of Civil Rights
17 Evaluation] and we have developed -- they have
18 developed this plan. And I feel it's very
19 comprehensive. It's an issue-oriented briefing, the
20 panels will be issue-oriented rather than group-
21 oriented.

22 I think it's a pretty well rounded
23 discovery plan. And recently, they have come up with
24 a list of witnesses that I think are all-encompassing
25 on the issue. And I urge adoption.

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1 CHAIR LHAMON: Terrific, thank you. To
2 continue our discussion, I'll offer a few points.

3 First, I am very grateful for the Office
4 of Civil Rights Evaluation, the specific expertise
5 that we get to benefit from for this project. And I
6 also appreciate Commissioner Kladney leading this and
7 the research that has come from your office as well,
8 to move us forward.

9 I believe that you all together will lead
10 us through this investigation with a solid foundation
11 and I look forward to taking up this issue in more
12 depth, with a briefing in February 2019.

13 So, any other discussion? Commissioner
14 Heriot?

15 COMMISSIONER HERIOT: I just want to say,
16 the side of this that interests me the most is the
17 education side. I've spoken to Commissioner Kladney
18 on this and I just want to make sure that we're going
19 to be looking into what gets taught at various
20 prisons.

21 I mean, it seems to me that the reason
22 this is an interesting issue is that there are a lot
23 more men in prison than there are women and that,
24 therefore, there are economies of scale at men's
25 prisons that you don't get in women's prisons.

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1 And I would like to see as much data as we
2 can get on that issue. And I'm wondering if
3 Commissioner Kladney can talk about that for a second.

4 COMMISSIONER KLADNEY: Thank you,
5 Commissioner Heriot, for your interest. I -- we have
6 several witnesses who will speak to rehabilitation in
7 those terms. You've accurately pointed to an issue
8 that is a very lively issue in regards to women in
9 prison.

10 They have -- they do not have -- my
11 preliminary research, not to draw any conclusions
12 early, my preliminary research has shown that, in
13 fact, men do have more outlets in terms of
14 rehabilitation and learning skills in prison.

15 While we were talking earlier, you had
16 mentioned, I think, welding. And that has come up,
17 electrics has come up, electrician training, plumbing,
18 real construction type jobs. And my office's
19 preliminary research has shown that they are not
20 available to women.

21 And we plan to have witnesses, there will
22 be witnesses at the briefing who can address that
23 specifically. We will have one lady, Alex McLaren,
24 who is BOP's [Bureau of Prisons] in charge of the
25 women's facilities, who will --

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1 COMMISSIONER HERIOT: The whole facilities
2 or just the education?

3 COMMISSIONER KLADNEY: All facilities.

4 CHAIR LHAMON: And we'll just interrupt and
5 note that we do not know who will actually speak at
6 the briefing itself. We know who we might invite.

7 COMMISSIONER KLADNEY: Right.

8 CHAIR LHAMON: And we haven't voted on that
9 yet.

10 COMMISSIONER KLADNEY: Let me put it this
11 way, I believe she will be invited. And I firmly
12 believe that she will probably attend. Although, I'm
13 speculating, a woman of her stature would be able to
14 address all those issues.

15 COMMISSIONER HERIOT: What I would like to
16 see, if we can get this, is, like, have an appendix to
17 the report that says, here are the courses that are
18 offered at such-and-such a prison, here are the ones
19 that are offered at another.

20 So that we really -- instead of just
21 getting them off-the-cuff when we're asking them a
22 question, like what gets taught. We won't get
23 completely accurate information there.

24 I would like it if we could ask that
25 witness to give us just the straight data on it, like

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1 in the year 2018, which by then will be finished, what
2 got taught at, maybe not every federal prison, but if
3 we had a good sample of men's versus women's prisons.

4 COMMISSIONER KLADNEY: I will try to obtain
5 that. I think, because BOP, I don't know how many
6 women's facilities they have, but it's not many
7 throughout the country.

8 COMMISSIONER HERIOT: Yes, that's the basic
9 problem.

10 COMMISSIONER KLADNEY: And the other
11 problem --

12 COMMISSIONER HERIOT: And I think it speaks
13 well for women, by the way.

14 COMMISSIONER KLADNEY: Thank you very much,
15 yes, it does.

16 COMMISSIONER HERIOT: Though I could say
17 nice things about men, too. The one I can't say is
18 that they are less likely to commit a crime that will
19 cause them to go to prison.

20 COMMISSIONER KLADNEY: I am speechless.
21 Anyway --

22 CHAIR LHAMON: So, keeping us moving,
23 productively --

24 (Laughter.)

25 CHAIR LHAMON: -- I think it might be time

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1 for us to call the question and take a roll call vote.

2 So, Commissioner Adegbile, have --

3 VICE CHAIR TIMMONS-GOODSON: Madam Chair?

4 CHAIR LHAMON: Oh, sorry, Madam Vice Chair,
5 go ahead.

6 VICE CHAIR TIMMONS-GOODSON: Madam Chair?

7 Yes, I just wanted to thank Commissioner Kladney for
8 his leadership on this. What appeals to me is the
9 fact that this will come on, this report will come on
10 the heels of our collateral consequences one.

11 And so, to some degree, it allows us to do
12 a slightly different eye as we look at women in prison
13 and collateral consequences. And so, I like that and
14 good job thus far.

15 CHAIR LHAMON: Thank you. Okay. So, now,
16 we'll turn to calling the question and taking a roll
17 call vote. Commissioner Adegbile, how do you vote?

18 COMMISSIONER ADEGBILE: Aye.

19 CHAIR LHAMON: Commissioner Heriot?

20 COMMISSIONER HERIOT: I'll vote aye, on the
21 ground that Commissioner Kladney is going to try to
22 get that information that I just mentioned.

23 CHAIR LHAMON: Thank you.

24 COMMISSIONER HERIOT: But did I just vote
25 aye on the timeline as well, is that part of the deal

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1 here?

2 CHAIR LHAMON: Yes.

3 COMMISSIONER HERIOT: Or are we voting
4 separately on that?

5 CHAIR LHAMON: I think Commissioner
6 Kladney's motion was to approval all of the product
7 materials, is that correct?

8 COMMISSIONER KLADNEY: Yes, it was.

9 COMMISSIONER HERIOT: Okay. I may have
10 something to say about the timeline.

11 COMMISSIONER KLADNEY: Do you want to pause
12 for discussion?

13 COMMISSIONER HERIOT: Yes. I'm just a
14 little bit concerned about Section 4 here, which is
15 kind of oddly numbered since the dates on Section 4
16 come after the dates on Section 3.

17 And it looks like we would be getting
18 affected agency review incorporated the very same day
19 that we are voting, which doesn't make sense to me.
20 It may be that there will be no such changes, but if
21 there are significant changes, I don't see how we
22 could be voting on the project on the same day.

23 CHAIR LHAMON: I think the vote is
24 actually, we disseminate the project for vote on that
25 day, but the vote itself takes place on November 8.

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1 So, it gets disseminated on October 25. And that's
2 the day that the affected agency review.

3 COMMISSIONER HERIOT: Is there some way to
4 move that affected agency review up? I mean, that
5 strikes me as very late in the game.

6 CHAIR LHAMON: I'm sorry, also, just to be
7 clear, the affected agency review comes in on October
8 18 and the responses to it are incorporated on October
9 25.

10 And then, as those responses are
11 incorporated, they are submitted to the Commissioners
12 for a vote. And the vote follows on November 8. So,
13 we would receive the affected agency review October 18
14 and then, vote on November 8.

15 COMMISSIONER HERIOT: Okay. Well, that's
16 good enough for me.

17 CHAIR LHAMON: Okay.

18 COMMISSIONER HERIOT: I am concerned,
19 though, that an affected agency review can be a big
20 deal.

21 CHAIR LHAMON: Yes, agreed.

22 COMMISSIONER HERIOT: And it can really,
23 really change the report. And if this one does, I
24 think we're going to have to put off the vote. But if
25 it doesn't, then we're okay.

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1 CHAIR LHAMON: Right. So, that's a bridge
2 we can cross then --

3 COMMISSIONER HERIOT: Okay.

4 CHAIR LHAMON: -- but I appreciate your
5 concern, yes.

6 COMMISSIONER HERIOT: Okay.

7 CHAIR LHAMON: Okay. So, turning back to a
8 vote, as we had proceeded, let me just confirm --

9 COMMISSIONER HERIOT: Then, I'm still a
10 yes.

11 CHAIR LHAMON: You're still a yes. And
12 Commissioner Adegbile, did that discussion change your
13 vote?

14 COMMISSIONER ADEGBILE: No.

15 (Laughter.)

16 CHAIR LHAMON: Okay. Commissioner
17 Kirsanow?

18 COMMISSIONER KIRSANOW: Yes.

19 CHAIR LHAMON: Thank you. Commissioner
20 Kladney?

21 COMMISSIONER KLADNEY: Yes.

22 CHAIR LHAMON: Commissioner Narasaki?

23 COMMISSIONER NARASAKI: Yes.

24 CHAIR LHAMON: Thank you. Commissioner
25 Yaki?

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1 COMMISSIONER YAKI: I'd like a vote on
2 whether I can really understand anything that went on
3 in the previous discussion on the previous vote, but
4 I'll vote yes, anyway.

5 (Laughter.)

6 CHAIR LHAMON: I appreciate your informed
7 vote, Commissioner Yaki. Vice Chair Timmons-Goodson?

8 VICE CHAIR TIMMONS-GOODSON: Yes.

9 CHAIR LHAMON: And I vote yes. So, the
10 motion passes unanimously.

11 **DISCUSSION AND VOTE ON THE BRIEFING DATE FOR THE**
12 **COMMISSION PROJECT ON SEXUAL HARASSMENT IN FEDERAL**
13 **WORKPLACES**

14 CHAIR LHAMON: The next items is a
15 discussion and vote on the briefing date for the
16 Commission project on sexual harassment in federal
17 workplaces. To begin discussion, is there a motion?

18 COMMISSIONER ADEGBILE: I'd like to move
19 that we revisit the date of that report.

20 CHAIR LHAMON: Is there a second?

21 COMMISSIONER KLADNEY: I'll second that,
22 Kladney.

23 VICE CHAIR TIMMONS-GOODSON: I second that,
24 Vice Chair Timmons-Goodson.

25 COMMISSIONER HERIOT: Do we have a

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1 proposal?

2 COMMISSIONER ADEGBILE: Yes, I'll speak to
3 it with great specificity. The motion is that we move
4 the date from the presently scheduled May 17 to May 9.

5 CHAIR LHAMON: Okay. So, is there a second
6 to that?

7 COMMISSIONER KLADNEY: Kladney, I'll
8 second.

9 VICE CHAIR TIMMONS-GOODSON: Timmons-
10 Goodson, second.

11 CHAIR LHAMON: Thank you. Any discussion?

12 COMMISSIONER ADEGBILE: Yes. I would just,
13 before we vote, like to anticipatorily, thank the
14 Commissioners and staff for considering this
15 modification.

16 CHAIR LHAMON: Any further discussion?

17 COMMISSIONER NARASAKI: This is
18 Commissioner Narasaki. I understand that this falls
19 around Commissioner Yaki's anniversary and
20 Commissioner Adegbile might want to send a card or
21 something to his wife.

22 CHAIR LHAMON: Flowers, candy.

23 (Laughter.)

24 COMMISSIONER ADEGBILE: I'm happy to take
25 on the responsibility for all of the above and I also

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1 would like to --

2 COMMISSIONER YAKI: I just want to note
3 that --

4 COMMISSIONER ADEGBILE: -- yield the floor
5 to Commissioner Yaki.

6 COMMISSIONER YAKI: -- I think for the past
7 ten years, I've endeavored to schedule this so it does
8 not fall on that, and every single time, it gets
9 changed. And the enduring patience of my wife is
10 something to behold on this particular matter, since
11 sometimes it fell on, like, key anniversary dates.

12 CHAIR LHAMON: The Commission is the gift
13 that just keeps on giving.

14 (Laughter.)

15 COMMISSIONER ADEGBILE: And special thanks
16 go to Commissioner Yaki, and I will pay penance to
17 your wife.

18 COMMISSIONER YAKI: Thank you.

19 CHAIR LHAMON: So, unless there's any
20 further discussion, I'll call the question and we can
21 take a roll call vote. Commissioner Adegbile, how do
22 you vote?

23 COMMISSIONER ADEGBILE: Aye.

24 CHAIR LHAMON: Commissioner Heriot?

25 COMMISSIONER HERIOT: Yes.

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1 CHAIR LHAMON: Commissioner Kirsanow?

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIR LHAMON: Commissioner Kladney?

4 COMMISSIONER KLADNEY: Yes.

5 CHAIR LHAMON: Commissioner Narasaki?

6 COMMISSIONER NARASAKI: Yes.

7 CHAIR LHAMON: Commissioner Yaki?

8 COMMISSIONER YAKI: Aye, with extreme
9 reservations.

10 (Laughter.)

11 CHAIR LHAMON: Vice Chair Timmons-Goodson?

12 VICE CHAIR TIMMONS-GOODSON: Yes.

13 CHAIR LHAMON: And I vote yes.

14 VICE CHAIR TIMMONS-GOODSON: And I'll
15 report on the extreme reservations to Commissioner
16 Yaki's wife.

17 (Laughter.)

18 CHAIR LHAMON: So, the motion passes
19 unanimously again.

20 **DISCUSSION AND VOTE ON EXTENSION OF THE STAND YOUR**

21 **GROUND STATEMENT DEADLINES**

22 CHAIR LHAMON: So, now, we'll take up our
23 amended agenda items, beginning with the extension of
24 the Stand Your Ground statement deadlines. To begin
25 your discussion, is there a motion?

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1 COMMISSIONER YAKI: Yes, this is
2 Commissioner Yaki. I'd like to amend the deadlines so
3 that the statements are due on January 11, 2019,
4 rebuttals due on February 11, and surrebuttal notice
5 due on February 18, text on February 25.

6 This has been worked and given the okay by
7 Commissioners Heriot and Kirsanow and other members of
8 the Commission, so I ask for this to be approved.

9 CHAIR LHAMON: Thank you. Is there a
10 second?

11 COMMISSIONER KIRSANOW: Second.

12 COMMISSIONER NARASAKI: Commissioner
13 Narasaki seconds.

14 CHAIR LHAMON: I think Commissioner
15 Kirsanow beat you to the second. We'll take it, thank
16 you. Unless there's further discussion, I'll call the
17 question and take a roll call vote. Commissioner
18 Adegbile, how do you vote?

19 COMMISSIONER ADEGBILE: Aye.

20 CHAIR LHAMON: Commissioner Heriot?

21 COMMISSIONER HERIOT: Yes.

22 CHAIR LHAMON: Commissioner Kirsanow?

23 COMMISSIONER KIRSANOW: Yes.

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 unanimously.

9 **DISCUSSION AND VOTE ON A LETTER TO HHS REGARDING**
10 **REPORTED PLANS TO DEFINE GENDER**

11 CHAIR LHAMON: Now, we'll turn to our
12 second amended agenda item, which is a discussion and
13 vote on a letter to HHS [Department of Health and
14 Human Services] regarding reported plans to define
15 gender. To begin discussion, is there a motion?

16 COMMISSIONER NARASAKI: Yes, sorry, this is
17 Commissioner Narasaki. I move that we adopt the
18 letter to HHS concerning the definition of gender, and
19 will be happy to read it at the appropriate time.

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

22 COMMISSIONER ADEGBILE: Second.

23 CHAIR LHAMON: Thank you. To begin
24 discussion, I'll begin with Commissioner Narasaki.
25 Commissioner Narasaki, we would benefit from your

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1 reading it, so we know what it is we're voting on.

2 COMMISSIONER NARASAKI: Yes. And staying
3 with our tradition, I am not going to need the
4 footnotes, so that we won't be here for days. It
5 reads:

6 [Begin text] Dear Secretary Azar: The U.S.
7 Commission on Civil Rights writes to urge the
8 Department of Health and Human Services not to
9 narrowly define gender to a biological, immutable
10 condition determined at birth.

11 We are concerned that such a definition
12 will have serious negative impacts on the health,
13 welfare, and civil rights of members of the
14 transgender community.

15 Defining federal protections barring
16 discrimination on the basis of sex to exclude
17 protections for transgender people runs counter to
18 longstanding legal precedents and will leave
19 transgender people vulnerable to unlawful
20 discrimination.

21 Approximately 1.4 million Americans
22 identify themselves as transgender and are widely
23 recognized by the medical community as facing barriers
24 to accessing high quality medical care.

25 The transgender community is uniquely

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1 vulnerable community and many of the Commission's
2 recent investigations highlight the discrimination and
3 significant health, social, and economic barriers they
4 face.

5 For instance, in our report on workplace
6 discrimination against the lesbian, gay, bisexual, and
7 transgender, LGBT, community, we found that LGBT
8 workers have faced a long serious and pervasive
9 history of official and unofficial employment
10 discrimination by both federal, state, and local
11 governments and private employers.

12 Our research indicated workplace
13 discrimination can drastically increase psychological
14 stress and other mental health problems.

15 Many transgender workers report
16 experiencing hostile work environments, where they are
17 often mistreated, harassed, physically or sexually
18 assaulted, forced to present as a gender they do not
19 identify with, asked inappropriate questions, and
20 deliberately taunted by the use of incorrect pronouns
21 by their coworkers.

22 Our report also found many transgender
23 individuals consider themselves underemployed because
24 they are overqualified for their position. For
25 example, transgendered people often report sex jobs

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1 because of difficulties of being hired.

2 According to a 2011 report, transgender
3 respondents who were unemployed have nearly double the
4 rate of engaging in survival sex work, four times the
5 rate of homeless, and 85 percent more incarceration
6 compared to those who were employed.

7 In addition, they are disproportionately
8 likely to be HIV-positive, use drugs, or drink heavily
9 and have multiple suicide attempts.

10 Our most recent report on police practices
11 also highlighted the trauma members of the transgender
12 community experience because of disparate treatment
13 and harassment from law enforcement.

14 Members of the transgender community
15 reported frequent harassment by law enforcement. The
16 report found that 59 percent of transgender
17 respondents reported being stopped by police and being
18 profiled as sex workers, when they were conducting
19 routine daily tasks in the neighborhood.

20 Of these individuals stopped, 51 percent
21 of all LGBT respondents and 61 percent of transgender
22 respondents reported that they had been physically or
23 verbally harassed. And some also reported sexual
24 abuse by police officers, including being forced to
25 perform sexual acts under threat of arrest.

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1 A 2013 research study by the National
2 Coalition of Anti-Violence Programs found that 48
3 percent of LGBT [pause text] -- sorry, I'm trying to
4 read this on my laptop - [resume text] hate crime
5 survivors reported that they experienced police
6 misconduct.

7 They found that transgender women were
8 four times more likely to experience police violence
9 compared to overall survivors. Transgender people
10 overall were seven times more likely to experience
11 physical violence when interacting with the police
12 compared to cisgender survivors and victims.

13 As the Commission's research makes clear,
14 it is critical that this community has the same level
15 of access to healthcare and health services that all
16 Americans have.

17 By adopting such a narrow definition of
18 gender, the Department will effectively be erasing the
19 identities of transgender people and endangering their
20 access to healthcare that meets their unique needs.

21 Such a definition sends a message that the
22 transgender community should not exist, fosters and
23 encourages prejudice inconsistent with our core
24 national values, and will have additional serious
25 implications if adopted across other federal agencies.

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1 Such a narrow definition would also be
2 contrary to the good judgment of any federal court
3 that has ruled on this very issue in interpreting
4 federal civil rights laws and whose opinions are
5 binding in their jurisdictions.

6 For instance, in a case challenging a
7 transgender boy's exclusion from a boy's locker room,
8 the U.S. Court of Appeals for the Seventh Circuit
9 pointed out that Title IX does not use the term
10 biological as a modifier for sex and went on to hold
11 that the policy that requires an individual to use a
12 bathroom that does not conform with his or her gender
13 identity punishes that individual for his or her
14 gender nonconformance, which in turn violates Title
15 IX.

16 Similarly, the U.S. Court of Appeals for
17 the Sixth Circuit rejected an employer's argument that
18 Title VII's bar on sex discrimination was limited to
19 biological sex and held that discrimination on the
20 basis of transgender and transitioning violates Title
21 VII.

22 The Commission calls on the Department of
23 Health and Human Services to reject any plans it may
24 have to narrowly define gender and to work to ensure
25 civil rights of members of the transgender community

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1 are protected.

2 We request the opportunity to meet with
3 you or your staff at your earliest convenience to
4 discuss this urgent issue. We look forward to your
5 response. Sincerely. [End text]

6 CHAIR LHAMON: Thank you, Commissioner
7 Narasaki. I noted as you were reading one friendly
8 amendment I'd like to offer, which is that in
9 Paragraph 1, in the third sentence, it begins,
10 defining federal protections barring discrimination
11 of, if we could change that "of" to "on," I think it
12 would just be more grammatically correct.

13 COMMISSIONER NARASAKI: I'm happy to accept
14 the friendly amendment.

15 CHAIR LHAMON: Thank you. Any further
16 discussion? Commissioner Heriot?

17 COMMISSIONER HERIOT: One concern I have is
18 that this is very premature. There is not yet a
19 policy out there.

20 But another clarification here is that,
21 your Footnote 1 refers to a New York Times article
22 that claims that such a policy is forthcoming. And in
23 that second line there, you say that the Department of
24 Health and Human Services is going to define gender.

25 Well, gender is not a statutory term in

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1 most of these statutes. The term that, if the article
2 is correct, it quotes from a memo that talks about
3 defining sex, not defining gender.

4 And sex is indeed a statutory term and,
5 hence, it wouldn't be terribly surprising if there's a
6 memo out there that does indeed attempt to define sex
7 within the meaning of those statutes.

8 But the notion that they're defining
9 gender, I don't know why they would be defining
10 gender. And so, the first thing I think we need to do
11 is make sure that there is such a memo and what it
12 says.

13 But I'd just be shocked if there's a memo
14 out there that defines gender, given that sex is
15 actually the term that's in the statute and, hence,
16 sex is the term that presumably needs defining. So, I
17 think that's a fundamental error in the letter as it's
18 presented right now.

19 Also, I think that, from the standpoint of
20 the progressive agenda, you're shooting yourself in
21 the foot. If you're going to define sex in a way
22 that's more in keeping with how we use the term gender
23 these days, then you're going to eliminate the
24 discriminatory aspects of it.

25 I mean, under Price Waterhouse, you can

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1 make an argument, it's been rejected by some courts,
2 but you can make an argument that if you have an
3 anatomical male who prefers feminine dress, feminine
4 hairstyles, and such, and therefore says, gender is
5 female, you can make the argument that if an employer
6 rejects an anatomical male that adopts feminine dress
7 and hairstyle, but not an anatomical female, that
8 there's sex discrimination.

9 But once you start getting clever with the
10 definition of sex, you make it so the arguments under
11 Price Waterhouse can't be made.

12 COMMISSIONER NARASAKI: Well, addressing
13 your first point, which I gather that you feel that
14 it's premature, we're actually trying to prevent them
15 from moving forward and not waiting for them to
16 actually do it and complain later.

17 CHAIR LHAMON: I will say, to add to that
18 response, Commissioner Narasaki, I fully support this
19 letter and am planning to vote in its favor. I think
20 it's important for us to speak to the issues.

21 And I also just want to confirm for the
22 record that I am not here to advance a progressive
23 agenda, I am here to advance the statutory and
24 regulatory protections for civil rights that exist
25 today and to help advise Congress, the President, and

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1 the American public about what would be effective
2 additional civil rights policy and that is my one and
3 only agenda and my position here.

4 Any further discussion of the statement?
5 Okay. I will then call the question and take a roll
6 call vote. Commissioner Adegbile, how do you vote?

7 COMMISSIONER ADEGBILE: Aye.

8 CHAIR LHAMON: Commissioner Heriot?

9 COMMISSIONER HERIOT: No.

10 CHAIR LHAMON: Commissioner Kirsanow?

11 COMMISSIONER KIRSANOW: No.

12 CHAIR LHAMON: Commissioner Kladney?

13 COMMISSIONER KLADNEY: Yes.

14 CHAIR LHAMON: Commissioner Narasaki?

15 COMMISSIONER NARASAKI: Yes.

16 CHAIR LHAMON: Commissioner Yaki?

17 COMMISSIONER YAKI: Aye.

18 CHAIR LHAMON: Vice Chair Timmons-Goodson?

19 VICE CHAIR TIMMONS-GOODSON: Yes.

20 CHAIR LHAMON: And I vote yes. The motion
21 passes, two Commissioners opposed, no Commissioner
22 abstained, all others were in favor.

23 **DISCUSSION AND VOTE ON A LETTER TO DHS AS A COMMENT**
24 **ON THE PROPOSED PUBLIC CHARGE RULE**

25 CHAIR LHAMON: We'll now turn to another

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1 amended agenda item, which is the discussion and vote
2 on a letter to DHS [Department of Homeland Security]
3 as a comment on the proposed public charge rule. To
4 begin discussion, is there a motion?

5 COMMISSIONER NARASAKI: Yes, this is
6 Commissioner Narasaki. I move that the Commission
7 file a response to the proposed rule to significantly
8 change the public charge rules as they pertain to
9 immigrants.

10 CHAIR LHAMON: Thank you. Is there a
11 second?

12 VICE CHAIR TIMMONS-GOODSON: Timmons-
13 Goodson, I second.

14 CHAIR LHAMON: Thank you, Madam Vice Chair.
15 Commissioner Narasaki, will you begin our discussion?

16 COMMISSIONER NARASAKI: I will --

17 CHAIR LHAMON: I'm sorry, I was just going
18 to recommend that we not read all seven pages of the
19 proposed letter into this record, just because of the
20 length of time. But I do defer to you and how you
21 want to move us.

22 COMMISSIONER NARASAKI: Yes, that was how I
23 was going to begin.

24 (Laughter.)

25 COMMISSIONER NARASAKI: Since this is a

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1 filing in opposition to a notice of proposed
2 rulemaking, I will -- and it's a very lengthy piece, I
3 don't think it's helpful to read it.

4 All of the Commissioners received a draft
5 of it from my Special Assistant, Jason Lagria. I'd
6 like to thank him and the other Special Assistants who
7 have helped work on it.

8 This is an issue that I have been working
9 on for, I think pretty much the 25 years that I have
10 been in Washington. And what the USCIS [U.S.
11 Citizenship and Immigration Services] is proposing to
12 do is to make it even more difficult for immigrants to
13 reunite with their family members.

14 There is a requirement in the law that,
15 when looking at people applying for admission, that
16 they not be someone who would immediately need cash
17 assistance.

18 And that has been how it has largely been
19 defined for a quarter of a century now, almost, and
20 will vastly -- would expand on a prospective basis,
21 what that means.

22 It has been on the totality of
23 circumstances, which are rather -- raises the concern
24 that that opens up the ability for there to be
25 discrimination in its application.

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1 And also, start to do something that some
2 people have been trying to do in efforts to change the
3 immigration laws and that is to introduce by the
4 backdoor requirement of some English fluency before
5 people would be able to enter.

6 We also think that it puts at risk people
7 whose circumstances may change after they come here,
8 they have to come here and do dangerous work, and may
9 get injured along the way.

10 They often have citizen children who then
11 would not be able to receive assistance and who would
12 be growing up without the necessary resources to make
13 sure that they can eventually become fully effective
14 and contributing adults.

15 So, I will stop there and see if there are
16 any questions.

17 CHAIR LHAMON: Commissioner Narasaki, this
18 is the Chair. I want to thank you for exercising your
19 leadership to move us in this direction, to use the
20 expertise of the Commission in submitting public
21 comments for proposed regulatory rule.

22 I think that it is an important way to use
23 the voice of the Commission and the expertise of the
24 members of the Commission and I appreciate your
25 leadership.

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1 In that respect, with this as a device,
2 and also on this very important issue, I plan to vote
3 in favor of the draft that you shared.

4 COMMISSIONER NARASAKI: I appreciate that.

5 And actually the challenge is that because this law
6 would fall disproportionately on different people of
7 different national origins that would be
8 discriminatory.

9 CHAIR LHAMON: Thank you. Any other
10 discussion on this motion. Hearing none, I will call
11 the question and take a roll call vote. Commissioner
12 Adegbile, how do you vote?

13 COMMISSIONER ADEGBILE: Aye.

14 CHAIR LHAMON: Commissioner Heriot?

15 COMMISSIONER HERIOT: No.

16 CHAIR LHAMON: Commissioner Kirsanow?

17 COMMISSIONER KIRSANOW: No.

18 CHAIR LHAMON: Commissioner Kladney?

19 COMMISSIONER KLADNEY: Yes.

20 CHAIR LHAMON: Commissioner Narasaki?

21 COMMISSIONER NARASAKI: Yes.

22 CHAIR LHAMON: Commissioner Yaki?

23 COMMISSIONER YAKI: Aye.

24 CHAIR LHAMON: Vice Chair Timmons-Goodson?

25 VICE CHAIR TIMMONS-GOODSON: Yes.

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CHAIR LHAMON: And I vote yes. The motion passes, two Commissioners opposed, no Commissioner abstained, all others were in favor.

**DISCUSSION AND VOTE ON A STATEMENT REGARDING THE
COMMISSION'S LEGISLATIVE AND OVERSIGHT PRIORITIES
FOR THE NEW CONGRESS**

CHAIR LHAMON: We'll now turn to another amended agenda item, which is a discussion and vote on a statement regarding the Commission's legislative and oversight priorities for the new Congress, as circulated earlier this week.

To open the floor for discussion, I move for approval of the statement as circulated by my Special Assistant. Is there a second?

COMMISSIONER KLADNEY: Kladney, I'll second.

COMMISSIONER NARASAKI: I second, Commissioner Narasaki.

CHAIR LHAMON: Thank you. I'll begin with a discussion of a few points, and I will, I think, depart from our tradition of reading it into the record, because it is also quite long, it is five pages, unless anyone particularly wants to hear the melodious tone of my voice at that length.

COMMISSIONER HERIOT: Let me think about

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1 that. No.

2 (Laughter.)

3 CHAIR LHAMON: Fair enough. So, let me
4 just describe the goals of this draft that I know we
5 have all seen. And that is Congress's mandate to the
6 Commission is to advice the President, Congress, and
7 the public on civil rights policy and the state of
8 civil rights enforcement.

9 With the new Congress coming in in January
10 of 2019, and given the volume of work and the
11 important issues always facing Congress, I think it's
12 prudent to provide a priority list from the Commission
13 to highlight key recommendations resulting from the
14 Commission's focused attention and research over the
15 last few years.

16 The urgent message that we would send to
17 Congress with this statement is that Americans need
18 our members of Congress to prioritize civil rights
19 with their oversight investigations and new
20 legislation.

21 With that, I'll pause and see if there's
22 any further discussion on the statement. Hearing none
23 --

24 COMMISSIONER NARASAKI: This is
25 Commissioner Narasaki.

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1 CHAIR LHAMON: Go ahead, Commissioner
2 Narasaki.

3 COMMISSIONER NARASAKI: I want to applaud
4 the Chair and her Special Assistant for their hard
5 work on this letter.

6 I think it is very appropriate, with new
7 Congress coming in and with so many new members, to
8 educate Congress, as is our mission, about the
9 concerns and recommendations that the Commission has
10 been raising recently, and look forward to supporting
11 this in my vote.

12 CHAIR LHAMON: Thank you. If no further
13 discussion, I will call the question and take a roll
14 call vote. Commissioner Adegbile, how do you vote?

15 COMMISSIONER ADEGBILE: I vote aye,
16 however, I would like to note on the letter that I
17 take no position with respect to the recommendation
18 regarding consent decrees and I would appreciate it if
19 the letter would so reflect.

20 CHAIR LHAMON: Thank you. Commissioner
21 Heriot, how do you vote?

22 COMMISSIONER HERIOT: No.

23 CHAIR LHAMON: Commissioner Kirsanow?

24 COMMISSIONER KIRSANOW: No.

25 CHAIR LHAMON: Commissioner Kladney?

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1 COMMISSIONER KLADNEY: Yes.

2 CHAIR LHAMON: Commissioner Narasaki?

3 COMMISSIONER NARASAKI: Yes.

4 CHAIR LHAMON: Commissioner Yaki?

5 COMMISSIONER YAKI: Aye.

6 CHAIR LHAMON: Vice Chair Timmons-Goodson?

7 VICE CHAIR TIMMONS-GOODSON: Yes.

8 CHAIR LHAMON: And I vote yes. The motion
9 passes, two Commissioners opposed, no Commissioner
10 abstained, and all others were in favor, with the note
11 to be added that Commissioner Adegbile raised.

12 **DISCUSSION AND VOTE ON THE STATEMENT REGARDING**
13 **CITIZENSHIP**

14 CHAIR LHAMON: We now turn to another
15 amended agenda item, which is a discussion and vote on
16 the statement regarding citizenship. To begin
17 discussion, is there a motion?

18 COMMISSIONER NARASAKI: Yes, this is
19 Commissioner Narasaki. I move that we adopt a
20 statement, U.S. Commission on Civil Rights warns
21 against attempts to end citizenship continued
22 hostility to immigrants.

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

25 COMMISSIONER ADEGBILE: I will second.

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1 COMMISSIONER YAKI: Second by Commissioner
2 Yaki.

3 CHAIR LHAMON: Okay, thank you. To begin
4 discussion, we'll start with Commissioner Narasaki.

5 COMMISSIONER NARASAKI: Yes. This is
6 fairly brief and so, I will go ahead and read it.

7 CHAIR LHAMON: Thank you.

8 COMMISSIONER NARASAKI: [begin text] The
9 U.S. Commission on Civil Rights strongly opposes the
10 President's announced intention to attempt to end
11 citizenship for children born in the United States to
12 non-citizens through Executive Order.

13 The President's proposal continues a
14 troubling pattern of statements expressing hostility
15 and animus toward immigrants or their nations of
16 origin that this Commission has previously noted.

17 This attempt is just the latest
18 manifestation of policies such as the Muslim Ban and
19 the proposed expansion of public charge termination to
20 curtail immigration from marginalized communities that
21 threaten the dignity, well-being, and civil rights of
22 immigrants and citizens in our country.

23 Attempts to end citizenship for children
24 born in the United States would clearly violate the
25 plain text of the 14th Amendment, which states: all

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1 persons born or naturalized in the United States and
2 subject to the jurisdiction thereof are citizens of
3 the United States.

4 The Supreme Court has been clear on this
5 subject. In 1898, the Supreme Court held, in United
6 States v. Wong Kim Ark, that a child born in the
7 United States to Chinese nationals who then were
8 barred from becoming naturalized U.S. citizens was
9 entitled to citizenship under the 14th Amendment.

10 In 1982, all nine Supreme Court Justices
11 agreed in Plyler v. Doe that the equal protection
12 clause applies to undocumented immigrants physically
13 within the jurisdiction of state no less than it does
14 to documented immigrants and U.S. citizens, because
15 they are subject to the jurisdiction of the United
16 States.

17 Others across the ideological spectrum
18 have also pointed out that the original intent of the
19 drafters of the 14th Amendment was for the amendment
20 to be broad and sweeping with very limited exceptions.

21 More than 13 countries offer similar
22 birthright citizenship.

23 The President's proposal is a violation of
24 the civil rights and equal protection of native-born
25 children of non-citizens that diminishes the rule of

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1 law in our country.

2 We strongly advise the President to
3 reconsider and publicly disavow any further effort to
4 end such citizenship. [End text]

5 CHAIR LHAMON: Thank you, Commissioner
6 Narasaki. Is there any discussion of this proposed
7 statement? Commissioner Heriot?

8 COMMISSIONER HERIOT: I suspect that
9 Commissioner Narasaki is correct about the
10 interpretation of the 14th Amendment here, but that's
11 just a suspicion on my part. The text, I think, seems
12 to go with her.

13 I have not read the argument in the other
14 direction yet. And I feel like I can't weigh in on
15 anything other than my gut reaction, as the text is
16 with Commissioner Narasaki and the text matters a
17 whole lot.

18 So, I'm going to have to abstain on this
19 one. Even if I'd read Professor Eastman's argument to
20 the contrary, at this point, and formed a firm opinion
21 that Commissioner Narasaki is correct, the rhetoric in
22 this particular document is not something that I could
23 support.

24 But the basic notion of what the 14th
25 Amendment requires, again, I think she's probably

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1 right, but I can't say that definitively until I've
2 read the argument going the other way.

3 CHAIR LHAMON: That's fair, thank you.

4 COMMISSIONER NARASAKI: I'll take a
5 probably right from you, Commissioner Heriot.

6 COMMISSIONER HERIOT: Yes, well, maybe at
7 some other point, I'll have a final opinion, but right
8 now, I just have to abstain.

9 CHAIR LHAMON: Thank you. Commissioner
10 Adegbile?

11 COMMISSIONER ADEGBILE: Madam Chair, I want
12 to pick up on a point made by Commissioner Heriot.
13 There is a sense in which the animating events for
14 this statement are in part about rhetoric.

15 They're about the rhetoric of our nation's
16 leader, who has chosen a path of demonizing human
17 beings on a categorical basis who hail from various
18 parts of the globe on the strength of their national
19 origin, their religion, rather than pursuing a path of
20 using the bully pulpit to take exception and note
21 where the policies or leadership vision of foreign
22 leaders is inconsistent with American interests.

23 So, rhetoric is important in public
24 policy. But it's important to have leaders who don't
25 engage in categorical demonization of people on the

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1 strength of where they were born, what the
2 circumstances of their birth are, or their religion.

3 And so, I would like to note that this
4 statement is important, because it doesn't stop with
5 rhetoric.

6 Rhetoric can sometimes form the basis for
7 policies and those policies can have effects when
8 joined with the dangerous rhetoric that is
9 inconsistent with the American idea, with our history,
10 and with our finest traditions.

11 CHAIR LHAMON: Commissioner Kirsanow?

12 COMMISSIONER KIRSANOW: Thanks, Madam
13 Chair. I would largely concur with what Commissioner
14 Heriot had just stated, although I would note that I
15 think it probably behooves everyone to engage in a bit
16 of humility as to whether or not the 14th Amendment
17 applies to this situation.

18 I do think that, first of all, at the time
19 the 14th Amendment was promulgated, no one
20 contemplated this particular issue.

21 But to the extent there was any discussion
22 about it, two of the principal drafters of it, Lyman
23 Turnbull and Jacob Howard, suggested that it wouldn't
24 apply as this statement would have it apply. That is,
25 it would not apply to the children of illegal

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1 immigrants born in America.

2 But I would say that it's a close reading.

3 If you look at the text, I would think the clear
4 reading of the text would say, most likely,
5 individuals born in the United States, regardless of
6 circumstance, are entitled to citizenship.

7 But beyond that, this document isn't
8 correct, in terms of its description of Wong Kim Ark
9 or of Plyler.

10 In Wong Kim Ark, the distinguishing
11 feature there is, even though these were Chinese
12 nationals, they were lawfully present in the United
13 States.

14 Second, with respect to Plyler v. Doe,
15 that was a narrow reading, that was a very narrow
16 case.

17 This suggests that somehow Plyler v. Doe
18 says that illegal immigrants born in the United States
19 are then entitled to citizenship, or the children of
20 illegal immigrants born in the United States are
21 entitled to citizenship.

22 And if you look at Plyler v. Doe, there
23 are a number of statements by the various justices
24 there that indicate that although individuals present
25 in the United States are subject to the equal

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1 protection of the law, that doesn't mean that a
2 category of citizens or all categories of individuals
3 are treated identically. There may be classifications
4 of individuals treated differently for a host of
5 reasons.

6 So, for that and other reasons, I will be
7 voting against this.

8 CHAIR LHAMON: It would be a substantial
9 difference in treatment to say that you could not be a
10 citizen, as a category.

11 So, I do just want to point out that a
12 strict textualist reading of all persons born or
13 naturalized in the United States does suggest that,
14 unless these children are not persons, they are
15 citizens under that amendment.

16 Commissioner Narasaki?

17 COMMISSIONER NARASAKI: I just wanted to
18 note that we are using Plyler v. Doe for the finding
19 that children, undocumented children, or children who
20 are born here, are subject to the jurisdiction.

21 CHAIR LHAMON: Commissioner Narasaki, I
22 noted --

23 COMMISSIONER YAKI: Madam Chair?

24 CHAIR LHAMON: I'm sorry, go ahead,
25 Commissioner Yaki.

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1 COMMISSIONER YAKI: I just wanted to make a
2 brief statement. The cases, civil rights cases of the
3 late 1800s, early 1900s, were brought by members of
4 the Chinese American community at the time, a
5 community that had been the subject of distinct and
6 overtly racist laws designed to prevent them from
7 entering the country, owning property, really having
8 the civil rights that every American or every person
9 who was in this country should be allowed.

10 And part of my pride in being half Chinese
11 American is knowing that these are individuals who
12 decided to challenge the interpretation of a law
13 brought down against them by a power structure that
14 was white and male, just to be factual about it, and
15 went to a Supreme Court that was also white and male,
16 and found these rights to be self-evident in the plain
17 wording of the 14th Amendment.

18 They pooled their money together, they
19 worked together as a community to fund these legal
20 challenges. This was not something that they took
21 lightly, given their status and the fear of
22 retribution for them.

23 And we have to remember that and remember
24 what it is that they did for every American who is
25 here now, for every immigrant family, for everyone who

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1 came through Ellis Island or Angel Island, their
2 children became American.

3 And the idea that one set of people or
4 sets of people, whether it is by faith or in the color
5 of their skin, somehow are not eligible to receive the
6 same types of benefits that millions of others who are
7 now second and third generation Americans is
8 ridiculous.

9 And the rhetoric of a President, as
10 Commissioner Adegbile said, means something,
11 especially when it means changing the very nature of
12 how we are defined and who we've seen ourselves and
13 who we've become as Americans.

14 And so, I strongly support this statement.

15 I would have put perhaps even more inflammatory
16 language that would have made Commissioner Heriot or
17 Commissioner Kirsanow even more on edge. I did not.

18 But I would say that, this is -- Wong Kim
19 Ark, Yick Wo, others are things that should be taught
20 in every history book about this Constitution and its
21 Amendments were meant to protect and bestow rights
22 upon every person in this country and not just for a
23 select few.

24 CHAIR LHAMON: Thank you, Commissioner
25 Yaki. Commissioner Narasaki, I noted when you read

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1 the statement, I think you added "such" before
2 "citizenship" in the last line, and I liked that
3 amendment and so, want to offer it as a friendly
4 amendment to the text, if you would be willing to
5 accept is.

6 So, the last sentence of the statement
7 would read, we strongly advise the President to
8 reconsider and publicly disavow any further efforts to
9 end such citizenship.

10 COMMISSIONER NARASAKI: Yes, I would accept
11 that amendment. And I'm a little worried about the
12 title, because it seemed a little bit overwrought in
13 the way we phrased it, that somehow the effort to end
14 all citizenship is happening.

15 I was trying to avoid the use of the term
16 birthright citizenship, but I would add it there, just
17 for clarity, so we don't cause a huge panic.

18 CHAIR LHAMON: Okay. So, unless there's
19 further discussion, with those two amendments, I will
20 call the question and take a roll call vote.
21 Commissioner Adegbile, how do you vote?

22 COMMISSIONER ADEGBILE: Aye.

23 CHAIR LHAMON: Thank you. Commissioner
24 Heriot?

25 COMMISSIONER HERIOT: Abstain.

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1 CHAIR LHAMON: Commissioner Kirsanow?

2 COMMISSIONER KIRSANOW: No.

3 CHAIR LHAMON: Commissioner Kladney?

4 COMMISSIONER KLADNEY: Yes.

5 CHAIR LHAMON: Commissioner Narasaki?

6 COMMISSIONER NARASAKI: Yes.

7 CHAIR LHAMON: Commissioner Yaki?

8 COMMISSIONER YAKI: Aye.

9 CHAIR LHAMON: Vice Chair Timmons-Goodson?

10 VICE CHAIR TIMMONS-GOODSON: Yes.

11 CHAIR LHAMON: And I vote yes. The motion
12 passes, one Commissioner opposed, one Commissioner
13 abstained, and all others were in favor.

14 **STAFF DIRECTOR'S REPORT**

15 CHAIR LHAMON: Next, we'll hear from Staff
16 Director Mauro Morales for the monthly Staff
17 Director's Report.

18 STAFF DIRECTOR MORALES: Thank you, Madam
19 Chair. I don't have anything more to add than what is
20 already contained in the report.

21 I always remain available to discuss any
22 questions or concerns a Commissioner may have about
23 the report or anything else that the Commission is
24 working on.

25 I'd just like to say, since this is the

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1 last business meeting of the year, I want to extend
2 good wishes to Commissioners, Special Assistants, and
3 all our staff for a wonderful job they did in 2018.
4 And I want to also wish everybody a wonderful holiday
5 and a safe one as well. So, thank you, Madam Chair.

6 **III. ADJOURN MEETING**

7 CHAIR LHAMON: Thank you. If there's
8 nothing further, I will hereby adjourn our meeting at
9 11:24 a.m. Eastern Time. Thank you.

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