

## U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, FEBRUARY 20, 2009

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The meeting convened in Room 540 at  
624 Ninth Street, N.W., Washington, D.C., at  
9:30 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman (via telephone)  
ABIGAIL THERNSTROM, Vice Chairman (via telephone)  
TODD F. GAZIANO, Commissioner  
GAIL L. HERIOT, Commissioner  
PETER N. KIRSANOW, Commissioner (via telephone)  
ARLAN D. MELENDEZ, Commissioner (via telephone)  
MICHAEL YAKI, Commissioner (via telephone)

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel  
MARGARET BUTLER  
CHRISTOPHER BYRNES, Chief, Programs Coordination Unit  
DEBRA CARR, Associate Director  
IVY L. DAVIS  
DEMITRIA DEAS  
LATRICE FOSHEE  
MAHA JWEIED  
ROBERT LERNER, Assistant Staff Director  
SOCK-FOON MacDOUGALL  
TINALOUISE MARTIN, Director of Management  
EMMA MONROIG, Solicitor  
LENORE OSTROWSKY  
EILEEN RUDERT  
KIMBERLY TOLHURST  
AUDREY WRIGHT  
MICHELLE YORKMAN

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COMMISSIONER ASSISTANTS PRESENT:

TIM FAY  
DOMINIQUE LUDVIGSON  
RICHARD SCHMELCHEL

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## P-R-O-C-E-E-D-I-N-G-S

(9:42 a.m.)

CHAIRMAN REYNOLDS: Good morning. This is Chairman Reynolds. The meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights.

It is -- we are late. It is 9:42 a.m., Eastern Standard Time on February 20, 2009.

The meeting is being held at 624 Ninth Street, N.W., Room 540, Washington, D.C., though the majority of Commissioners are participating by phone.

I will, once again, call each Commissioner in order to determine if there is a quorum, just to make it official.

Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: I'm present.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Present.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Here.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Here.

CHAIRMAN REYNOLDS: Commissioner Yaki?

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1 COMMISSIONER YAKI: Virtually present.

2 CHAIRMAN REYNOLDS: Commissioner Taylor?

3 (No response.)

4 Okay. Is the Staff Director present?

5 STAFF DIRECTOR DANNENFELSER: Present.

6 CHAIRMAN REYNOLDS: Can the Court Reporter  
7 hear everyone?

8 (No response.)

9 Please have the Court Reporter confirm  
10 that he or she can hear everyone?

11 STAFF DIRECTOR DANNENFELSER: Can you hear  
12 me now? Okay.

13 CHAIRMAN REYNOLDS: Okay. If a  
14 Commissioner is participating by phone and wants to  
15 make a statement, please identify yourself first. And  
16 whenever it is necessary to take a vote, I ask that  
17 you provide your name and indicate how you vote.

18 COMMISSIONER YAKI: Commissioner Reynolds,  
19 this is Commissioner Yaki.

20 CHAIRMAN REYNOLDS: Commissioner Yaki, you  
21 have a --

22 COMMISSIONER YAKI: Point of order.

23 CHAIRMAN REYNOLDS: Yes.

24 COMMISSIONER YAKI: I just heard the first  
25 Blackberry on the line, so I would ask that the people

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1 in the room make sure that their Blackberrys and cell  
2 phones are away from their mics, because since the  
3 majority of us are on the phone it will -- it will  
4 impact us the most. Like there.

5 CHAIRMAN REYNOLDS: Okay, folks. Let's  
6 move our Blackberrys and Treos away from the phone.

7 Okay. Let's start with the two known  
8 amendments to the agenda.

9 **I. APPROVAL OF AGENDA**

10 CHAIRMAN REYNOLDS: The first is I move to  
11 table the discussion of the findings of fact and  
12 recommendations for the briefing report on the  
13 Department of Justice's enforcement of voting rights  
14 in the 2008 presidential election. Is there a second?

15 COMMISSIONER YAKI: Second.

16 CHAIRMAN REYNOLDS: Discussion?

17 COMMISSIONER HERIOT: I wish you had told  
18 me that last night.

19 CHAIRMAN REYNOLDS: I'm sorry?

20 COMMISSIONER HERIOT: I wish you had told  
21 me that last night.

22 CHAIRMAN REYNOLDS: Well, I wasn't aware  
23 that -- well, the rationale for this is that recently,  
24 as in yesterday, I discovered that we may have -- the  
25 changes to the document may not be in accordance with

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1 the understanding at the last meeting.

2 COMMISSIONER HERIOT: That would be true.

3 COMMISSIONER GAZIANO: That would be true,  
4 but some of us were working --

5 COMMISSIONER HERIOT: Yes. We have been  
6 working to try to make them better.

7 VICE CHAIR THERNSTROM: There is no cause  
8 to postponing it. Let us just move on. We don't need  
9 to have a big discussion of that.

10 CHAIRMAN REYNOLDS: I'm sorry, Abby.

11 VICE CHAIR THERNSTROM: I'm sorry. This  
12 is Commissioner -- this is Vice Chair Thernstrom.  
13 There is no cause to moving on. Let's just agree --  
14 agree to the postponement and move on. We can have it  
15 -- we don't need a big discussion.

16 CHAIRMAN REYNOLDS: Okay. All in favor?  
17 Vice Chair Thernstrom, how do you vote?

18 VICE CHAIR THERNSTROM: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Gaziano?

20 COMMISSIONER GAZIANO: Pass.

21 CHAIRMAN REYNOLDS: I'm sorry?

22 COMMISSIONER GAZIANO: Can I pass?

23 CHAIRMAN REYNOLDS: So you -- that's the  
24 equivalent of an abstention?

25 COMMISSIONER GAZIANO: No. I want to see

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1 if I can vote -- oh, okay. I'll -- can you return to  
2 me?

3 CHAIRMAN REYNOLDS: Yes, okay. I  
4 understand now.

5 Commissioner Kirsanow?

6 COMMISSIONER KIRSANOW: Yes.

7 CHAIRMAN REYNOLDS: Commissioner Heriot?

8 COMMISSIONER HERIOT: Yes.

9 CHAIRMAN REYNOLDS: Commissioner Melendez?

10 COMMISSIONER MELENDEZ: Yes.

11 CHAIRMAN REYNOLDS: Commissioner Yaki?

12 COMMISSIONER YAKI: Pass.

13 (Laughter.)

14 VICE CHAIR THERNSTROM: This isn't poker.

15 (Laughter.)

16 CHAIRMAN REYNOLDS: Let's go back to  
17 Commissioner Gaziano.

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRMAN REYNOLDS: Okay. And, finally,  
20 Commissioner Yaki?

21 COMMISSIONER YAKI: Yes.

22 CHAIRMAN REYNOLDS: Okay. The motion  
23 passes.

24 The second amendment to the agenda is to  
25 add the rechartering of the Mississippi SAC. Is there

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1 a second?

2 COMMISSIONER KIRSANOW: Kirsanow. Second.

3 CHAIRMAN REYNOLDS: Discussion?

4 (No response.)

5 Vice Chair Thernstrom, how do you vote?

6 VICE CHAIR THERNSTROM: Yes.

7 CHAIRMAN REYNOLDS: Commissioner Gaziano?

8 COMMISSIONER GAZIANO: Yes.

9 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

10 COMMISSIONER KIRSANOW: Yes.

11 CHAIRMAN REYNOLDS: Commissioner Heriot?

12 COMMISSIONER HERIOT: Yes.

13 CHAIRMAN REYNOLDS: Commissioner Melendez?

14 COMMISSIONER MELENDEZ: Abstain.

15 CHAIRMAN REYNOLDS: Commissioner Yaki?

16 COMMISSIONER YAKI: Abstain.

17 CHAIRMAN REYNOLDS: Okay. And I vote in  
18 the affirmative. The motion passes.

19 So I move to approve the agenda as  
20 amended. Is there a second?

21 VICE CHAIR THERNSTROM: Second.

22 Thernstrom. Second.

23 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
24 how do you vote?

25 VICE CHAIR THERNSTROM: Yes.

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1 CHAIRMAN REYNOLDS: Commissioner Gaziano?

2 COMMISSIONER GAZIANO: Yes.

3 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

4 COMMISSIONER KIRSANOW: Yes.

5 CHAIRMAN REYNOLDS: Commissioner Heriot?

6 COMMISSIONER HERIOT: Yes.

7 CHAIRMAN REYNOLDS: Commissioner Melendez?

8 COMMISSIONER MELENDEZ: Abstain.

9 CHAIRMAN REYNOLDS: Commissioner Yaki?

10 COMMISSIONER YAKI: Abstain.

11 CHAIRMAN REYNOLDS: Okay. And I vote in  
12 the affirmative. The motion passes.

13 Okay. Next up is the approval of the  
14 minutes of the December 12, 2008, meeting.

15 **II. APPROVAL OF MINUTES OF**

16 **DECEMBER 12, 2008, AND**

17 **JANUARY 16, 2009 MEETINGS**

18 CHAIRMAN REYNOLDS: Is there a second?

19 VICE CHAIR THERNSTROM: second.

20 CHAIRMAN REYNOLDS: Discussion?

21 (No response.)

22 Vice Chair Thernstrom, how do you vote?

23 VICE CHAIR THERNSTROM: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Gaziano?

25 COMMISSIONER GAZIANO: Yes.

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1 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

2 COMMISSIONER KIRSANOW: Yes.

3 CHAIRMAN REYNOLDS: Commissioner Heriot?

4 COMMISSIONER HERIOT: Yes.

5 CHAIRMAN REYNOLDS: Commissioner Melendez?

6 COMMISSIONER MELENDEZ: Yes.

7 CHAIRMAN REYNOLDS: Commissioner Yaki?

8 COMMISSIONER YAKI: Yes.

9 CHAIRMAN REYNOLDS: Okay. And I also vote  
10 for it, so the motion passes.

11 Next up, I move that we approve the  
12 minutes from the January 16, 2009 meeting. Is there a  
13 second?

14 VICE CHAIR THERNSTROM: Thernstrom.  
15 Second.

16 CHAIRMAN REYNOLDS: Discussion?

17 (No response.)

18 Vice Chair Thernstrom, how do you vote?

19 VICE CHAIR THERNSTROM: Yes.

20 CHAIRMAN REYNOLDS: Commissioner Gaziano?

21 COMMISSIONER GAZIANO: Abstain.

22 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

23 COMMISSIONER KIRSANOW: Yes.

24 CHAIRMAN REYNOLDS: Commissioner Heriot?

25 COMMISSIONER HERIOT: Yes.

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1 CHAIRMAN REYNOLDS: Commissioner Melendez?

2 COMMISSIONER MELENDEZ: Yes.

3 CHAIRMAN REYNOLDS: Commissioner Yaki?

4 COMMISSIONER YAKI: Yes.

5 CHAIRMAN REYNOLDS: And I vote in the  
6 affirmative.

7 COMMISSIONER GAZIANO: Actually, could I  
8 just amend that? I don't -- let me vote no. I should  
9 have raised some specific adjustments to it, but I  
10 don't think that is necessary. I just don't agree  
11 exactly how it was worded.

12 CHAIRMAN REYNOLDS: Okay. So please make  
13 sure that the record reflects that Commissioner  
14 Gaziano voted no.

15 Okay. Next up, we have Announcements.

16 **III. ANNOUNCEMENTS**

17 CHAIRMAN REYNOLDS: For the month of  
18 February, February is Black History Month, in which we  
19 honor the accomplishments of black Americans from all  
20 walks of life and recognize their extraordinary  
21 contributions to the nation's history. These include  
22 writers such as Dubois, Baldwin, and Ellison, to name  
23 a few; musicians like Mahalia Jackson, Billie Holiday,  
24 Duke Ellington, and Billy Strayhorn; and civil rights  
25 leaders such as Ella Baker, Robert Moses, and Dr.

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1 Martin Luther King.

2 We also take special note for those black  
3 Americans, past and present, who have served or  
4 currently serve in public office, including our new  
5 President, Barack Obama. In recognition of these  
6 achievements, I hope that public officials, educators,  
7 librarians, and people throughout the United States  
8 will observe this month by highlighting and honoring  
9 the contributions made by black Americans to our  
10 nation.

11 Next up --

12 COMMISSIONER YAKI: Commissioner -- Chair  
13 Reynolds, this is Commissioner Yaki.

14 CHAIRMAN REYNOLDS: Yes.

15 COMMISSIONER YAKI: Just -- Chair  
16 Reynolds, I just wanted to say on the record that the  
17 irony of celebrating Black History Month in lieu of  
18 the at best insensitive, at worst potentially racist  
19 cartoon in The New Yorker, is something that I just  
20 wanted to register my personal objection to.

21 COMMISSIONER GAZIANO: New Yorker? Which  
22 cartoon? Are you talking about the one in The New  
23 York Post?

24 COMMISSIONER YAKI: New York Post, that's  
25 right.

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1 COMMISSIONER GAZIANO: Oh, okay.

2 COMMISSIONER YAKI: A cartoon regarding  
3 the -- their so-called parody of the stimulus bill.  
4 And I just wanted to state for the record my extreme  
5 discomfort with that image.

6 CHAIRMAN REYNOLDS: Okay.

7 VICE CHAIR THERNSTROM: This is Thernstrom  
8 here. Commissioner Yaki, I have not seen it, and I  
9 would very much like it if you could forward it to me.

10 COMMISSIONER YAKI: I will.

11 VICE CHAIR THERNSTROM: Thank you.

12 CHAIRMAN REYNOLDS: Any other comments?

13 (No response.)

14 Okay. The next item is the submission of  
15 the fiscal year 2010 request for congressional  
16 appropriations.

17 **V. MANAGEMENT AND OPERATIONS**

18 CHAIRMAN REYNOLDS: This request for  
19 appropriations, which first must be cleared by OMB,  
20 supports the Commission's baseline operations for  
21 2010, the addition of critical staff, and a few  
22 enhanced activities related to its five-year strategic  
23 plan goals.

24 Their proposed request, which was  
25 distributed to Commissioners earlier this week via

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1 e-mail, is a \$600,000 increase over our 2009 request,  
2 and it is \$1 million more than our '09 appropriated  
3 level.

4 At the request of various Commissioners, I  
5 approached the Staff Director and notified him of my  
6 intention to make a motion at this meeting to lift the  
7 moratorium, so that we can hire three Commissioner  
8 special assistants.

9 Because three special assistants were not  
10 contemplated in the budget distributed to  
11 Commissioners earlier this week, I asked the Staff  
12 Director to consider adjustments to the budget at  
13 various spending categories that would allow for such  
14 hiring, and I asked that he come prepared to discuss  
15 the adjustments today.

16 My desire is for an amended budget that  
17 will allow us to incrementally move toward a full  
18 complement of special assistants, but also allow for a  
19 number of other critical staff hires.

20 With that, I turn the discussion over to  
21 the Staff Director.

22 STAFF DIRECTOR DANNENFELSER: Thank you,  
23 Mr. Chairman. The cost, in terms of salaries and  
24 benefits, for FY2010 for three Commissioner's  
25 Assistants is \$335,370. We discovered that the

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1 document that we based the rent projection on was the  
2 wrong document, and came across the correct document  
3 for what the actual rent is going to be in FY2010.  
4 And there is -- actually, the rent is going to be  
5 \$150,404 less. So that was the starting point was  
6 that \$150,000.

7 We also removed the position -- funding  
8 for the position of the Budget Assistant, reduced  
9 travel by \$25,000, postponed the public service  
10 announcement in the amount of \$35,000, reduced the  
11 secretarial support in the Southern Regional Office to  
12 about \$10,000, and reduced external accounting by  
13 about \$48,000.

14 We have some optional services under  
15 external accounting that we believe we can do without,  
16 particularly since we are anticipating in the budget  
17 the hiring of a Budget Chief. So we believe that the  
18 Budget Chief will be able to handle what we would have  
19 otherwise paid for through those optional services.  
20 And that -- those items added up to the \$335,370.

21 VICE CHAIR THERNSTROM: Mr. Staff  
22 Director, this is Vice Chair Thernstrom. When is the  
23 budget submission due?

24 STAFF DIRECTOR DANNENFELSER: The date to  
25 OMB was actually yesterday, but they did give us an

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1 extension. They are going to allow us to submit it on  
2 Monday.

3 VICE CHAIR THERNSTROM: Okay. So that  
4 means we have got to have a vote today on this budget,  
5 is that correct?

6 STAFF DIRECTOR DANNENFELSER: Yes.

7 COMMISSIONER GAZIANO: Mr. Chairman, this  
8 is Commissioner Gaziano. I think it is very helpful  
9 that the Staff Director has done this analysis on the  
10 assumption that we will vote for a \$9.4 million  
11 request. But could we begin with that perhaps, and  
12 just discuss whether that is really -- if there is a  
13 consensus that that is really the figure we should ask  
14 for? I wonder whether we should ask for a little bit  
15 more, or maybe a lot bit more. But I will defer to  
16 you, if you want to cover the discussion in another  
17 way.

18 STAFF DIRECTOR DANNENFELSER: Well, let me  
19 just address that. This is the Staff Director. There  
20 was a -- what's called a passback from OMB. We did  
21 submit a budget request initially for about  
22 \$12.4 million, and on January 30th we got our passback  
23 from OMB, and we had a very short turnaround time -- I  
24 think about a week -- that we -- if we wanted to  
25 appeal that number -- in which to appeal it. And

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1 also, with the understanding that our budget  
2 submission itself would be due on January 19th.

3 We decided that, given that this was an  
4 increase, significant -- not nearly as much as we  
5 would like to see, but a significant increase compared  
6 to the amounts that we had seen before, and given what  
7 we anticipated would be the budget situation, that it  
8 would be very difficult to prevail with that type of  
9 appeal, we decided to forego the appeal and to just  
10 focus our attention on preparing the --

11 COMMISSIONER GAZIANO: Which --

12 STAFF DIRECTOR DANNENFELSER: -- \$9.4  
13 million budget.

14 COMMISSIONER GAZIANO: Which -- did you  
15 circulate it to Commissioners and I just missed it?  
16 About not appealing?

17 STAFF DIRECTOR DANNENFELSER: I consulted  
18 with the Chairman about it.

19 COMMISSIONER GAZIANO: Okay. For the  
20 record -- and if there is a majority of other  
21 Commissioners who are satisfied with \$9.4 million,  
22 that's fine. But for the record, as I maintained last  
23 year, we are not required by statute -- and I am aware  
24 of no regulation that binds Commissioners, or statute,  
25 to accept this OMB passback.

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1           We are an independent agency, and I  
2 understand why certainly a number of Commissioners  
3 wanted to follow OMB's figures in the past. But I at  
4 least want it to be clear in the record that we are  
5 not required to do so. So regardless of the --  
6 whether we should have pursued an appeal before now or  
7 after, we are I certainly think certainly not bound by  
8 that \$9.4 million figure. We can, it seems to me,  
9 require OMB to pass on a higher amount to Congress.

10           STAFF DIRECTOR DANNENFELSER: Well, we did  
11 have a discussion about that point last year, and the  
12 General Counsel prepared a memo explaining the legal  
13 background and the practice of the Commission over the  
14 years with respect to that issue.

15           COMMISSIONER GAZIANO: Let's review that,  
16 then, and maybe we could ask the General Counsel, what  
17 statute prohibits us? Is there any statute that  
18 prohibits us from exceeding the passback amount?

19           MR. BLACKWOOD: This is David Blackwood.  
20 I did indeed write a memo last year. I didn't bring  
21 it with me. I didn't know that topic was coming up.  
22 There are restrictions on what can be done as the  
23 Commission collectively. I am going on my best  
24 judgment, and, yes, there is a specific statute  
25 relating to that.

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1           The question that you raise, as an  
2 independent agency, and, as you know, there is  
3 question about to what degree -- well, I won't say to  
4 what degree, but obviously we are an independent  
5 agency, but under what status, we -- as a collective  
6 body, what the agency can do in -- to oppose what OMB  
7 is suggesting.

8           I think I pointed out last year practice  
9 has been that in -- the Commission, as a body, has  
10 ignored what OMB has required.

11           COMMISSIONER GAZIANO:       That's what I  
12 thought.

13           MR. BLACKWOOD:   Now --

14           COMMISSIONER GAZIANO:   We have requested  
15 higher amounts in the past.

16           MR. BLACKWOOD:   Yes, but that is practice.

17           The law, in my view, my recollection of what I said  
18 last year, was that the OMB restrictions do cover the  
19 agency as a collective whole.   I also pointed out,  
20 though, that Commissioners, as special government  
21 employees, as individuals, are fully able to lobby on  
22 the Hill or suggest a higher amount.

23           But as a collective body, I believe my  
24 best recollection was -- and OMB's position is -- the  
25 agency as a whole cannot challenge the passback.

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1                   COMMISSIONER GAZIANO:    I disagree with  
2                   that. My recollection is different, that there was no  
3                   statute that prohibits us from asking for a higher  
4                   amount, and our practice certainly bears that out. Do  
5                   you remember what -- it is certainly not in our  
6                   organic statute.

7                   MR. BLACKWOOD:    That is correct. It is  
8                   not in our organic statute. If you want, I can go get  
9                   the memo and give you a copy of it.

10                  COMMISSIONER GAZIANO:    Well, I would  
11                  certainly appreciate that, because my recollection  
12                  certainly isn't detailed. But the --

13                  COMMISSIONER YAKI:    This is Commissioner  
14                  Yaki, if I can just add on to what Commissioner  
15                  Gaziano is saying. I am still -- I am still unclear  
16                  as to what you mean by the Commission as a body cannot  
17                  ask for more. If there is no statutory prohibition  
18                  against that, but merely practice, or an OMB "naughty  
19                  naughty letter" from us, I don't understand why we  
20                  would be constrained from saying -- adding an extra  
21                  half mill into the budget that we submit to Congress.

22                  MR. BLACKWOOD:    Well, my point,  
23                  Commissioner, is that there is a statute.  
24                  Unfortunately, I am going on my recollection. I will  
25                  be glad to go get the memo and report on it, if you

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1 give me about two or three minutes. But there is an  
2 explicit statute, is my recollection, that would  
3 prohibit federal agencies from challenging OMB.

4 COMMISSIONER HERIOT: I'd like to see the  
5 memo.

6 MR. BLACKWOOD: I'll get it again.

7 COMMISSIONER HERIOT: Yes, thank you.

8 CHAIRMAN REYNOLDS: Okay. At this point,  
9 do we need an additional -- well, at this point I  
10 would like to move to lift the moratorium on special  
11 assistant hiring, to allow the hiring of three  
12 additional special assistants, with the understanding  
13 that if Commissioner Kirsanow wishes to hire a special  
14 assistant during 2010 that the Staff Director shall  
15 identify offsets in the budget that would allow an  
16 additional hire.

17 COMMISSIONER HERIOT: Well, why is the  
18 motion, then, to lift the moratorium as to three? Why  
19 isn't that to lift the moratorium?

20 CHAIRMAN REYNOLDS: Because we have  
21 identified offsets for three, not four. Also,  
22 Commissioner Kirsanow has indicated that he is not  
23 going to hire a special assistant, in which case the  
24 -- my reasoning is that it -- well, I don't see the  
25 reason to create a budget line item for an item that

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1 we are not going to make use of.

2 COMMISSIONER HERIOT: Well, there is the  
3 fact that I am not willing to vote, as I told you, for  
4 three. I think that sets a very bad precedent. I am  
5 very much in favor of lifting the moratorium as to  
6 everyone. And if Commissioner Kirsanow isn't  
7 interested in hiring a special assistant at this  
8 point, that is fine. But I don't want anything to  
9 stand in his way from hiring that special assistant,  
10 if he should decide to.

11 COMMISSIONER KIRSANOW: This is Kirsanow.  
12 Commissioner Heriot, I appreciate that. I think this  
13 is really a -- really not a difference in kind, but  
14 matter of degree. I think that Commissioner -- Chair  
15 Reynolds makes a very good point that it probably  
16 doesn't serve us well to have a line item in there  
17 that probably isn't going to be exercised.

18 By lifting this moratorium as to three,  
19 with the understanding that it would be revisited, we  
20 are simply -- it is almost virtually the same as  
21 lifting the moratorium in its entirety. And I think  
22 it just simply saves us the monies that would be  
23 allocated in this particular year for another director  
24 or another special assistant.

25 COMMISSIONER YAKI: This is Commissioner

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1 Yaki. Commissioner Kirsanow is saying that if we lift  
2 it for all, they will have to do the budget set-asides  
3 for those positions regardless. Is that what you are  
4 saying, Commissioner Kirsanow? And that is what we  
5 don't want to have to do?

6 COMMISSIONER KIRSANOW: At this particular  
7 time.

8 COMMISSIONER HERIOT: Well, again, I am  
9 not willing to vote for a motion that does not lift it  
10 as to everyone. But I would be willing to vote for  
11 one that lifts it as to everyone, but that stipulates  
12 that Commissioner Kirsanow is not going to hire until  
13 some later date in the budget year, so that it  
14 wouldn't be necessary to adjust the budget for that.

15 But I don't want to walk away from here  
16 and think that from now on we could have seven such  
17 slots only, which I think is -- you know, sets a very,  
18 very dangerous precedent.

19 COMMISSIONER KIRSANOW: Kirsanow here.  
20 Mr. Staff Director, if we were to lift the moratorium  
21 as to all, with the understanding among ourselves,  
22 whether it is tacit or explicit, that I am not going  
23 to be hiring anybody, are we compelled to list that as  
24 a line item in the budget?

25 STAFF DIRECTOR DANNENFELSER: No, I -- my

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1 reading of it would be that the moratorium would just  
2 lift any blocking situation, but we always -- there is  
3 many times, in Congress and certainly with the  
4 Commission, where we have the authority to fill  
5 certain positions or to spend certain money.

6 But we make the judgment that we don't  
7 have the appropriations at the current time, or we  
8 have certain priorities at the current time, so we  
9 don't fill all of those authorized positions. We have  
10 many authorized positions now that are not filled,  
11 because we just don't have the appropriations or we  
12 have made priority decisions about what to fill.

13 So I don't think that the -- lifting the  
14 moratorium completely would certainly not obligate us  
15 to fund all of the positions at this point in time.  
16 That would be a judgment for the Commission to make as  
17 to whether or not it wanted to fund one, two, three,  
18 or four additional positions.

19 VICE CHAIR THERNSTROM: This is  
20 Commissioner -- Vice Chair Thernstrom. I don't really  
21 understand this discussion, I'm sorry. We at the  
22 moment have a -- don't have a full complement of  
23 potential assistants. To lift it for three rather  
24 than four doesn't really change the fact that it  
25 continues the status quo, except we have increased the

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1 number of Commissioners. I don't see the grand  
2 principle here of, well, we can't -- it has to be four  
3 or it's zero. I mean, we have been living with --

4 COMMISSIONER HERIOT: Right now we have a  
5 situation where in theory we are sharing, everyone  
6 gets .5.

7 VICE CHAIR THERNSTROM: No, I'm sorry.  
8 Commissioner Melendez and Commissioner Yaki are not  
9 sharing. Commissioner Yaki does not have a special  
10 assistant, period. And I just -- you know, I mean,  
11 going the way the chair suggested continues, it seems  
12 to me, the current situation, although it -- although  
13 very nicely adding a few more Commissioners. I just  
14 don't see the grand principle.

15 COMMISSIONER GAZIANO: It seems like we  
16 are --

17 CHAIRMAN REYNOLDS: This is Chairman  
18 Reynolds. I agree with you, Vice Chair Thernstrom. I  
19 believe that there is a principle involved, but I  
20 don't give it as high a value as Commissioner Heriot.

21 But at the end of the day, under my proposal the only  
22 Commissioner who would be affected in a practical way  
23 would be Commissioner Kirsanow, and that is why I am  
24 willing to defer to Commissioner Kirsanow on this,  
25 because he is the one who would have the burden. No

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1 other Commissioner, in a practical sense, would  
2 shoulder a burden until this plan, except Commissioner  
3 Kirsanow, so --

4 COMMISSIONER HERIOT: Except if  
5 Commissioner Kirsanow gets hit by a truck tomorrow and  
6 replaced by a different Commissioner, that  
7 Commissioner would not have made that agreement.

8 COMMISSIONER KIRSANOW: That's pretty  
9 morbid.

10 COMMISSIONER HERIOT: I hope you don't get  
11 hit by a truck, Pete. Look both ways before you cross  
12 the street for me.

13 COMMISSIONER YAKI: And we certainly hope  
14 you don't fly to Buffalo.

15 COMMISSIONER GAZIANO: The principle --  
16 this is Commissioner Gaziano. The principle is  
17 important to me, too, but it sounds like we are very  
18 close, so just modifying this to satisfy all of us.  
19 So why don't we -- the motion reflect that we lift the  
20 moratorium as to all Commissioners, who want to hire a  
21 special assistant, and then with regard to the budget  
22 issue we accept Commissioner Kirsanow's current  
23 position that he is -- doesn't have any plans to hire  
24 a separate special assistant in the next fiscal year,  
25 so we don't need to make that a budget item. But

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1 should he choose to do so --

2 COMMISSIONER KIRSANOW: This is Kirsanow.

3 I think that makes good sense. I don't see this as a  
4 matter of giant principle, simply a matter of  
5 accounting as far as I am concerned. And having been  
6 assured by the Staff Director that we have got this  
7 latitude, that we don't have to necessarily put that  
8 in, because we have authorized all four, then I am  
9 perfectly satisfied.

10 COMMISSIONER YAKI: Commissioner Yaki  
11 here. My only question for Commissioner Kirsanow is  
12 that, depending on what may or may not happen with our  
13 budget, maybe we should call this our stimulus budget,  
14 if -- this is also for the chair -- if the language  
15 were to say that we lifted the moratorium on hiring  
16 special assistants, semi-colon, however, that for the  
17 remainder of FY09, and into '10, funding shall be  
18 available only for three additional. And if in the  
19 future a fourth special assistant is required by  
20 Commissioner Kirsanow, that budgetary authority --  
21 budgetary authority be sought that, I mean, I would be  
22 -- I think that is kind of the middle ground.

23 VICE CHAIR THERNSTROM: This is Vice Chair  
24 Thernstrom. Well, that does not cover the contingency  
25 of Commissioner Kirsanow being knocked off by one of

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1 his enemies, so --

2 COMMISSIONER KIRSANOW: I've got many.

3 CHAIRMAN REYNOLDS: Well, Pete is a sweet,  
4 dear man, and he doesn't have any enemies. But, Pete,  
5 as I said earlier, I defer to you. Whether it is what  
6 Commissioner Gaziano put on the table or Commissioner  
7 Yaki, we are dancing on the head of a pin.

8 COMMISSIONER KIRSANOW: Yes. I think that  
9 there is shades of difference there. The idea is we  
10 are lifting the moratorium. I am simply not going to  
11 exercise my prerogative to fill that position at this  
12 particular time, so let's just go forward and do it.  
13 Let's lift the moratorium.

14 COMMISSIONER YAKI: Okay. Then, why don't  
15 we just -- this is Commissioner Yaki. Why don't we  
16 just say this, "We are lifting the moratorium;  
17 however, the Director is instructed not to budget for  
18 a fourth special assistant until such time as directed  
19 by Peter Kirsanow or his replacement."

20 (Laughter.)

21 COMMISSIONER HERIOT: That works I think.

22 COMMISSIONER GAZIANO: That works.

23 COMMISSIONER HERIOT: That works. You  
24 know, as long as Pete's right to hire is not  
25 contingent on something that he doesn't control.

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1 CHAIRMAN REYNOLDS: Well, it would be --  
2 at least the potential would be there, because we  
3 would still have to look at the budget. I mean, we  
4 can't spend what we don't have.

5 VICE CHAIR THERNSTROM: Mr. Chairman, I  
6 really would like to go back to your original motion.  
7 It was perfectly good.

8 CHAIRMAN REYNOLDS: Well --

9 VICE CHAIR THERNSTROM: No.

10 CHAIRMAN REYNOLDS: Well, let's --

11 VICE CHAIR THERNSTROM: And it was clear.  
12 This thing is now a mess.

13 CHAIRMAN REYNOLDS: Well, Commissioner  
14 Yaki, please repeat -- and, in fact, make a motion.  
15 Whatever you just said, please say it again, but make  
16 it a motion.

17 COMMISSIONER YAKI: Well, it depends -- it  
18 depends, Commissioner -- Chair Reynolds, if you want  
19 me to add your last modification, because it would --  
20 the motion, with your modification, would read that,  
21 "The moratorium for special assistants is now lifted;  
22 however, that funding -- that funding and authority  
23 for the fourth special assistant that would be within  
24 the purview of the position occupied by Commissioner  
25 Kirsanow would not be funded or allocated until

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1 directed by Commissioner Kirsanow and/or his  
2 replacement, and pending a budgetary adjustment that  
3 would have -- that would be agreed upon by the  
4 Commission."

5 COMMISSIONER HERIOT: See, that I won't go  
6 for. I liked Yaki's motion before.

7 COMMISSIONER YAKI: I just added the  
8 Reynolds --

9 COMMISSIONER HERIOT: Yes, I know.

10 COMMISSIONER YAKI: -- clause.

11 COMMISSIONER HERIOT: I know. I liked it  
12 the first time.

13 COMMISSIONER GAZIANO: And I might even be  
14 able to go with "and pending a budget adjustment," but  
15 not requiring -- yes, the Staff Director probably  
16 would need to adjust the budget, and we are only  
17 talking about the hypothetical that Commissioner  
18 Kirsanow changes his mind, which is unlikely. That it  
19 require a subsequent vote of the Commission to give  
20 Commissioner Kirsanow his wish is the problem.

21 CHAIRMAN REYNOLDS: Okay. Well, we can  
22 lump that piece off.

23 COMMISSIONER GAZIANO: Okay. Good.

24 CHAIRMAN REYNOLDS: But the trigger rests  
25 on whether we find sufficient offsets.

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1                   COMMISSIONER HERIOT: Well, we can't have  
2 that just for that position. You know, we have to  
3 commit now to find those offsets, whatever they are.

4                   COMMISSIONER GAZIANO: The Staff Director  
5 would find those offsets. It might take -- I don't  
6 know what it would take. And it is very hypothetical,  
7 since --

8                   COMMISSIONER YAKI: This is Commissioner  
9 Yaki. The whole reason why I stuck myself in the  
10 position of having no special assistants for as long  
11 as we have is because at the time that we enacted this  
12 -- enacted this the suggested offsets were untenable  
13 and unacceptable to the -- actually, to a unanimous  
14 commission.

15                   This was when we were in a deep budgetary  
16 hole, and we made a conscious decision to do this, and  
17 it was something that I suggested, along with the  
18 chair, in order to accommodate that. I -- you know,  
19 hopefully we will not have to revisit those bad times,  
20 but, as I understand it, the chair has worked very  
21 diligently with the Staff Director to find non-  
22 objectionable offsets, which I still want to hear  
23 about, for the three positions that we are hiring now,  
24 but that the fourth could be a -- could be -- and I  
25 can't speak for the chair -- could be a tipping point

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1 in terms of -- in terms of offset that some members of  
2 the Commission would not want to -- would not want to  
3 sacrifice.

4 So I believe that, you know, either we go  
5 back to the original motion of the chair or we go to  
6 the Yaki/Reynolds motion, which would at least give  
7 the purview to the Staff Director, provided --  
8 provided he or she finds the requisite offsets. It  
9 may not require Board approval, but certainly if the  
10 Director is charged with finding -- finding offsets,  
11 then the Board will have some oversight on that  
12 particular matter.

13 CHAIRMAN REYNOLDS: Pete, as far as I am  
14 concerned, it is your call.

15 COMMISSIONER KIRSANOW: You know, I am  
16 perfectly satisfied with the Yaki/Reynolds  
17 formulation, or the Yaki formation with some mention  
18 of the above.

19 CHAIRMAN REYNOLDS: No, no, just pick on.

20 COMMISSIONER KIRSANOW: I'll go with the  
21 Yaki formulation.

22 CHAIRMAN REYNOLDS: Okay. Commissioner  
23 Yaki, please make a motion, just the Yaki motion sans  
24 the Reynolds addition.

25 COMMISSIONER YAKI: Okay. I move that the

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1 moratorium on special assistants be lifted; however,  
2 that funding shall only be made available for three  
3 special assistants, and that funding for the fourth  
4 special assistant (assigned -- who would be assigned  
5 to Commissioner Kirsanow) shall not be funding --  
6 funded or budget allocated until such time as  
7 Commissioner Kirsanow (and/or his or her  
8 replacement) --

9 COMMISSIONER HERIOT: His.

10 (Laughter.)

11 COMMISSIONER HERIOT: It is not a his or  
12 her.

13 (Laughter.)

14 COMMISSIONER YAKI: And his replacement --  
15 well, you know, Peter, we really haven't -- you know,  
16 never mind. So with that modification, seek such a  
17 special assistant through request to the -- by request  
18 to the Staff Director. Is that it?

19 CHAIRMAN REYNOLDS: I second.

20 COMMISSIONER HERIOT: Well, I need to hear  
21 it read back again. Can the Court Reporter read back?

22 COMMISSIONER YAKI: Can the Court Reporter  
23 read it back? I am --

24 COMMISSIONER GAZIANO: I don't know that  
25 the Court Reporter has a microphone.

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1                   COMMISSIONER YAKI: Okay. Motion that the  
2 moratorium on special assistants be lifted; however,  
3 that funding shall only be allocated for three special  
4 assistants, and that funding for a fourth special  
5 assistant (to be assigned to Kirsanow) shall not be  
6 funded or budgetary amounts allocated for that  
7 position until such time as Commissioner Kirsanow (or  
8 his replacement) shall request that of the Staff  
9 Director.

10                   CHAIRMAN REYNOLDS: Gail, are you  
11 comfortable with the language?

12                   COMMISSIONER HERIOT: I'm comfortable.

13                   CHAIRMAN REYNOLDS: I second the motion.  
14 Do we need additional discussion?

15                   COMMISSIONER GAZIANO: Call the question.

16                   CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
17 how do you vote?

18                   VICE CHAIR THERNSTROM: I vote yes.

19                   CHAIRMAN REYNOLDS: Commissioner Gaziano?

20                   COMMISSIONER GAZIANO: Yes.

21                   CHAIRMAN REYNOLDS: Commissioner Kirsanow?

22                   COMMISSIONER KIRSANOW: Yes.

23                   CHAIRMAN REYNOLDS: Commissioner Heriot?

24                   COMMISSIONER HERIOT: Yes.

25                   CHAIRMAN REYNOLDS: Commissioner Melendez?

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1 COMMISSIONER MELENDEZ: Yes.

2 CHAIRMAN REYNOLDS: Commissioner Yaki?

3 COMMISSIONER YAKI: Pass. No, I vote yes.

4 (Laughter.)

5 CHAIRMAN REYNOLDS: Motion passes  
6 unanimately. Okay.

7 COMMISSIONER GAZIANO: Mr. Chairman, we  
8 have in the hearing room been handed David Blackwood's  
9 memo of last year, and a separate memorandum to Ken  
10 Marcus, I assume some time before that. Have you all  
11 received those via e-mail?

12 CHAIRMAN REYNOLDS: No.

13 VICE CHAIR THERNSTROM: No.

14 COMMISSIONER GAZIANO: Oh, okay. Well, I  
15 made -- I am not sure -- that may be helpful. I don't  
16 -- I don't read it quite the same way the General  
17 Counsel does. I see there is a statute cited that the  
18 President "shall prepare budgets of the United States  
19 Government." And, of course, that includes the  
20 legislative budget or could include the legislative  
21 budget. But, clearly, Congress doesn't have to follow  
22 the President's recommendation on its own budget. I  
23 don't see that statute as directly bearing on the  
24 question.

25 I do see a lot of OMB Circulars cited and

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1 interpretations based on OMB Circulars. And I don't  
2 find the OMB Circulars compelling authority for the  
3 practice of the Commission asking more than OMB has.

4 By the way, I find it a very good practice  
5 to get OMB's advice on these things. I think it is a  
6 sound practice that we may go through the OMB process.

7 But I do not find any of that convincing as to our  
8 statutory authority to request the amount that we  
9 request from Congress, especially since half of us  
10 were appointed from Congress.

11 CHAIRMAN REYNOLDS: Commissioner Gaziano,  
12 is that a separate issue? Are you dissatisfied with  
13 the budget that we have on the table?

14 COMMISSIONER GAZIANO: I am somewhat  
15 dissatisfied. We did ask for 12.4. By the way, I  
16 don't remember that we were -- in the future, I think  
17 we should be asked -- and maybe I missed it, so I  
18 apologize if I did -- what our request is, but the  
19 12.4 figure -- if you don't mind, I would like the  
20 Staff Director to elaborate why -- what the basis of  
21 12.4 is. I can guess that that would fill a lot of  
22 our vacant positions. Why did we take the position  
23 that 12.4 was the appropriate amount?

24 STAFF DIRECTOR DANNENFELSER: Well, as you  
25 said, it would fill many positions that have been

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1 vacant. And if we had a perfect world, we would want  
2 to fill those positions. And so that is what we  
3 requested, but now we have to live within the amount  
4 that we, you know, have got -- received through the  
5 passback.

6 COMMISSIONER GAZIANO: I disagree with  
7 that last point. But did you make an assessment as to  
8 which positions we could fill and what activities we  
9 could undertake with \$12.4 million?

10 STAFF DIRECTOR DANNENFELSER: Yes, we did.  
11 At the time we prepared that budget and presented it,  
12 we did make that kind of assessment.

13 COMMISSIONER GAZIANO: And --

14 STAFF DIRECTOR DANNENFELSER: We checked  
15 with all of the directors of the different offices,  
16 with the people in the regions, and then made our own  
17 assessment, and then consulted with the Commissioners  
18 as we put that forward for the Commission vote  
19 previously.

20 COMMISSIONER GAZIANO: And just to clarify  
21 for me, because --

22 COMMISSIONER YAKI: That included the  
23 civil rights cruise, right?

24 STAFF DIRECTOR DANNENFELSER: That was not  
25 in there.

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1 COMMISSIONER GAZIANO: Because maybe I  
2 forgot, did we vote on this 12.4 figure?

3 STAFF DIRECTOR DANNENFELSER: Yes.

4 COMMISSIONER GAZIANO: Okay. I must have  
5 -- when was that? Was that last September?

6 STAFF DIRECTOR DANNENFELSER: September it  
7 was, yes. Yes, it was signed I believe September 5th  
8 or 6th.

9 COMMISSIONER GAZIANO: Okay. And just  
10 based on your review, would that have filled -- would  
11 that be sufficient to fill all our vacancies or most  
12 of our vacancies?

13 STAFF DIRECTOR DANNENFELSER: It would  
14 have filled most of our vacancies. I don't believe we  
15 -- for instance, we had -- we have -- well, not all of  
16 the authorized vacancies, but about -- I think it was  
17 about 16 positions. We have, for instance, a Public  
18 Affairs person and a Congressional Affairs person --

19 COMMISSIONER GAZIANO: Yes.

20 STAFF DIRECTOR DANNENFELSER: --  
21 authorized within the Office of the Staff Director.  
22 We were proposing to fill that with one person. The  
23 one person would handle both duties. So -- but we did  
24 not seek to fill every position.

25 COMMISSIONER GAZIANO: Yes. A lot of this

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1 is coming back to me now, and those seem like critical  
2 positions to me. I just couldn't remember whether it  
3 was all of the vacancies or just the critical  
4 vacancies. I tend to think, Mr. Chairman, that 9.4 is  
5 better than 8.4 or 8.8, but not quite what we should  
6 really be asking Congress. And I would just like to  
7 hear other people's opinion on that.

8 CHAIRMAN REYNOLDS: Well, I don't think  
9 that there is -- that you will find any disagreement  
10 that -- that we would rather have our ask as opposed  
11 to the passback number. But looking at the amount of  
12 time that we have left, and also looking at the fact  
13 that the decision to deviate from OMB's  
14 recommendation, I think that that requires a separate  
15 conversation. I don't think anyone came to this  
16 meeting prepared to have that conversation.

17 COMMISSIONER MELENDEZ: This is  
18 Commissioner Melendez. I have a question. If we  
19 submitted a higher number to Congress, and spending  
20 doesn't occur until October of this year, do we have  
21 time to readjust the budget at that point before  
22 October 1st?

23 CHAIRMAN REYNOLDS: I believe the answer  
24 is no. But, Marty, David, anyone, correct me if I am  
25 wrong. I believe that, assuming we hand the budget in

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1 on Monday, then essentially it is out of our hands.

2 STAFF DIRECTOR DANNENFELSER: Well, what  
3 we hand in is our -- what we are saying -- this is our  
4 intention of how we expect to spend this money. There  
5 may be changes in terms of needs that occur, and there  
6 may be more money that gets freed up. There could be  
7 attrition that would occur among the staff. There  
8 could be other types of changes that could occur, and  
9 that would then free up money to be spent in other  
10 areas that are not now contemplated.

11 CHAIRMAN REYNOLDS: Okay. I thought that  
12 Commissioner Melendez was asking whether we would have  
13 another opportunity to increase our ask.

14 STAFF DIRECTOR DANNENFELSER: Oh, I'm  
15 sorry.

16 COMMISSIONER MELENDEZ: No. What I was  
17 asking was let's say we sent in a higher figure,  
18 12 million or whatever it is, have we tried that? You  
19 know, something different than just going back to the  
20 passback every time? And what would be the  
21 consequences of doing that? Would they tell us at  
22 some point before October 1st of this year, would  
23 start spending for 2010, that we could readjust and go  
24 back to where we are now as far as this budget that  
25 you would present today?

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1           STAFF DIRECTOR DANNENFELSER: Well, if we  
2 had appealed, and the appeal had not been determined  
3 before we had to submit the budget, I -- I assume that  
4 if we were to win our appeal then perhaps they would  
5 give us authority to increase. But --

6           COMMISSIONER GAZIANO: By the way, if I  
7 had been asked whether we should appeal, I am not sure  
8 I would have agreed we should appeal to OMB. I would  
9 have said let's just skip that, and let's just vote  
10 the amount that we want OMB to send to Congress.

11           I don't think we should be bound by an  
12 appeal. Maybe it would be fine to go through it, if  
13 time permitted. Maybe some people would think that  
14 it's a wise practice. But I'm not sure that the  
15 appeal is a good thing anyway. It suggests that we  
16 are bound.

17           STAFF DIRECTOR DANNENFELSER: Well, let --  
18 the General Counsel pointed out a passage in his  
19 May 28, 2008, memo in which it says that, "To ensure  
20 consistency within the government, OMB is required to  
21 'establish government-wide financial management  
22 policies for executive agencies' in any sites."  
23 31 U.S. Code, Section 503.

24           COMMISSIONER GAZIANO: We are not an  
25 executive agency.

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1                   COMMISSIONER HERIOT:   Are we an executive  
2 agency?

3                   COMMISSIONER GAZIANO:   We are not an  
4 executive agency.

5                   STAFF DIRECTOR DANNENFELSER:   Then, he  
6 goes on to point out that the Commission has  
7 recognized this power by adopting AI 1-1,  
8 Section 1.02. So we would conceivably need to amend  
9 our AI to change that policy.

10                  COMMISSIONER GAZIANO:   The AI that he  
11 cites is somewhat vague to me. It may be inconsistent  
12 with my understanding, but I am not even sure. The AI  
13 is -- the Commission is governed by -- in its  
14 administrative functions by specific legislation.  
15 Again, I don't think this is specific --

16                  CHAIRMAN REYNOLDS:   Well, Todd, I mean,  
17 again, we were not prepared to have this conversation.  
18 You have the memo in front of you. The rest of us  
19 don't. We have a deadline in front of us. Yes, it  
20 would be better if we had more money, but it seems to  
21 me that the issue that you have put on the table is --  
22 I don't think that we can get our arms around that  
23 particular issue during this meeting.

24                  COMMISSIONER GAZIANO:   Well, I regret that  
25 -- I assumed we were prepared or we should have been

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1 better prepared for it, since we had this discussion  
2 last April and last May. I am just trying to raise  
3 these principles, if -- if -- and I will -- you know,  
4 I will perhaps offer a motion that we increase the  
5 amount.

6 And if it -- after raising this issue, if  
7 the majority of Commissioners, for whatever reason,  
8 legally or otherwise, don't want to vote for that  
9 higher amount, that's fine. But I at least wanted to  
10 state for the record that we have that authority, and  
11 do appreciate hearing from some other Commissioners  
12 that they seem to agree.

13 Commissioner Yaki, do you agree with that  
14 statutory interpretation I am offering?

15 COMMISSIONER YAKI: This is Commissioner  
16 Yaki. I agree with the interpretation by Commissioner  
17 Gaziano. I think that we have perhaps a more salutary  
18 environment in which to push it than we did before.  
19 But I also understand from the chair that we have an  
20 obligation or a deadline to get this thing out the  
21 door, regardless.

22 As much as I have been the one screaming  
23 about the fact that -- over the years that we could  
24 ask for more money, and have lost every time, I think  
25 -- I always try to raise it early enough in the

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1 process, so we can identify what that money would go  
2 for. So I am a little hesitant, you know, in terms of  
3 supporting a motion now by Commissioner Gaziano. But  
4 certainly in principle I support what he is saying.

5 COMMISSIONER GAZIANO: Okay. That -- and  
6 maybe it will -- maybe we should reserve this for a  
7 fuller discussion at a later time if -- I won't offer  
8 such a motion if it -- if it appears that a majority  
9 of the Commission, for whatever reason, isn't willing  
10 to ask for a higher amount. But certainly this was  
11 the appropriate time to raise it, since I thought we  
12 had raised it before.

13 COMMISSIONER HERIOT: I guess I have just  
14 one question here. I mean, in principle, I think that  
15 Todd is probably right that, you know, we are not  
16 bound by OMB. My question -- and this is for anybody  
17 who has any insight on this -- is if we were to ask  
18 for more, is that likely to be, you know, received in  
19 Congress in some positive way? Or is it just going to  
20 be viewed as not playing -- not playing the game  
21 properly and perhaps even working to our detriment?

22 CHAIRMAN REYNOLDS: Looking at the  
23 reaction to past decisions to ignore the OMB number, I  
24 think that it would be viewed as -- well, I don't  
25 think it would be viewed favorably by OMB or some

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1 folks from Congress.

2 COMMISSIONER HERIOT: During that history  
3 where we were asking for more than OMB had authorized,  
4 did we ever get more than OMB had authorized?

5 CHAIRMAN REYNOLDS: I can't say for  
6 certain. I believe the answer is no. Our budget has  
7 essentially been flat for about a decade.

8 STAFF DIRECTOR DANNENFELSER: This is the  
9 Staff Director. The Director of the Office of  
10 Management has indicated that the answer to that  
11 question is no, that whenever there was a request for  
12 more funds it was not granted, and she has some  
13 institutional memory in that area.

14 COMMISSIONER GAZIANO: That may be.  
15 Again, I don't think I am inclined to make a motion.  
16 It may have actually helped us -- the Commission  
17 receive the amount that was requested and the amount  
18 requested not be cut.

19 So it is -- it is an interesting question,  
20 and I am glad that Commissioner Heriot raised it,  
21 because, quite frankly, I had that same thought in my  
22 own mind. But if there isn't a majority interested in  
23 asking for other reason, I will suggest we end the  
24 discussion and vote on the amount that the rest of the  
25 Commission seems willing to ask for.

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1 CHAIRMAN REYNOLDS: Okay. On that note, I  
2 guess the first motion I would like to make on this  
3 topic, I move to amend the budget and the accompanying  
4 documentation to reflect the changes recommended by  
5 the Staff Director. Is there a second?

6 COMMISSIONER KIRSANOW: Kirsanow. Second.

7 VICE CHAIR THERNSTROM: Seconded. Vice  
8 Chair Thernstrom.

9 CHAIRMAN REYNOLDS: Okay. Discussion?

10 COMMISSIONER MELENDEZ: This is Commission  
11 Melendez. I still, you know, have some concerns.  
12 Although I support the special assistants to all of  
13 the Commissioners, you know, the issue on -- there is  
14 a lot of issues that I still have. I know that I had  
15 prioritized the Human Resource Director, and I know  
16 that we are, you know, still with that one.

17 It ties into the capital plan I think for  
18 the overall Commission. And I don't know -- I know  
19 that one of our mandates is to do a certain amount of  
20 public announcements. Sounds like we're kind of  
21 cutting that down. I am not sure whether -- and that  
22 is -- I think that is a mandate we are supposed to do.

23 It also -- you know, the indepth  
24 discussion, you know, on this total budget I don't  
25 think has been adequate. The issue on the conference

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1 we are supposed to have -- and this is pertaining to  
2 the past budget of -- you know, the current budget as  
3 to the questions I had asked the Staff Director about  
4 where do we stand with current budget, you know,  
5 hasn't been totally responded -- didn't get a lot of  
6 response back on many of my questions.

7 And so I have a real concern, because I  
8 know that we have this conference coming up. I have  
9 no information on whether or not that is still  
10 feasible to even do it, based on the current budget.  
11 So I just -- you know, the whole budget process as far  
12 as kind of monitoring that as we go along doesn't --  
13 so I am not satisfied with it, and --

14 CHAIRMAN REYNOLDS: Commissioner Melendez,  
15 I share your concerns. And, in fact, I have -- I will  
16 make -- I will commit to you that those questions that  
17 have been pending for several months, that you will  
18 get a response one way or the other before the next  
19 meeting.

20 COMMISSIONER MELENDEZ: Okay. And then,  
21 just -- you know, I know that we have -- you know,  
22 within what we are submitting to Congress, you know,  
23 it says that we still have only chartered half of the  
24 SACs. And, as you know, I have been always a  
25 supporter of trying to get more funding to go to the

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1 SACs. We still don't have a Western Region Director  
2 out west, and we still --

3 CHAIRMAN REYNOLDS: Mr. Melendez?

4 COMMISSIONER MELENDEZ: -- are proposing  
5 to hire assistants in some of the other regions. So I  
6 am not totally -- as far as the priorities, I am not  
7 really totally satisfied with this budget. So I am  
8 just letting you know that.

9 CHAIRMAN REYNOLDS: Okay. Thank you. Any  
10 other comments?

11 COMMISSIONER HERIOT: I guess I would have  
12 to add I am not entirely satisfied with the budget  
13 either.

14 CHAIRMAN REYNOLDS: Okay. Vice Chair  
15 Thernstrom, how do you vote?

16 VICE CHAIR THERNSTROM: I vote yes. I'm  
17 sorry. I had it -- had the phone a little ways away  
18 from me. I vote yes.

19 CHAIRMAN REYNOLDS: Commissioner Gaziano?

20 COMMISSIONER GAZIANO: No.

21 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

22 COMMISSIONER KIRSANOW: Yes.

23 CHAIRMAN REYNOLDS: Commissioner Heriot?

24 COMMISSIONER HERIOT: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Melendez?

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1 COMMISSIONER MELENDEZ: No.

2 CHAIRMAN REYNOLDS: Commissioner Yaki?  
3 Commissioner Yaki?

4 COMMISSIONER YAKI: Oh, oops, sorry. I  
5 had the mute button on. Pass.

6 CHAIRMAN REYNOLDS: Okay. I vote in  
7 favor. Commissioner Yaki?

8 COMMISSIONER YAKI: Point of question for  
9 the Parliamentarian. How many votes does this need to  
10 pass?

11 CHAIRMAN REYNOLDS: Majority.

12 MS. MONROIG: And there are seven  
13 Commissioners.

14 COMMISSIONER YAKI: But the majority of  
15 those voting? Does that include abstentions?

16 MS. MONROIG: So four votes, and there are  
17 already four votes in favor.

18 COMMISSIONER YAKI: Okay. Then, abstain.

19 CHAIRMAN REYNOLDS: Okay. So the motion  
20 passes.

21 Next item. Okay. The next item is the --  
22 and we were just voting to amend the paperwork to  
23 reflect the changes that Marty discussed earlier.

24 COMMISSIONER GAZIANO: Oh, okay. Maybe I  
25 misunderstood the vote, then. I'm sorry. What -- I

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1 apologize, and I might ask to amend my -- which --  
2 what was the last vote on? I'm sorry.

3 CHAIRMAN REYNOLDS: Okay. Well, let me  
4 repeat the motion.

5 COMMISSIONER GAZIANO: Okay.

6 CHAIRMAN REYNOLDS: I move to amend the  
7 budget and the accompanying documentation to reflect  
8 the changes recommended by the Staff Director.

9 COMMISSIONER GAZIANO: Oh, yes. I vote  
10 yes on that. It's the amount that I may vote no on.

11 CHAIRMAN REYNOLDS: Commissioner Melendez,  
12 would you like to change your vote? Commissioner  
13 Melendez? Commissioner Yaki?

14 COMMISSIONER YAKI: Are we changing our  
15 vote?

16 (Laughter.)

17 CHAIRMAN REYNOLDS: Well, just to ensure  
18 that you did not -- well, do you want to change your  
19 vote, in light of the fact that we are not voting on  
20 the budget right now?

21 COMMISSIONER YAKI: No.

22 CHAIRMAN REYNOLDS: Okay. All right.  
23 Now, I move that the Commission approve the submission  
24 of a request for \$9.4 million in appropriations for  
25 fiscal year 2010 to Congress as previously amended.

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1 Is there a second?

2 VICE CHAIR THERNSTROM: Second. Vice  
3 Chair Thernstrom seconds it.

4 CHAIRMAN REYNOLDS: Okay. I assume that  
5 we have already discussed this issue. So I will ask  
6 Vice Chair Thernstrom, how does she vote?

7 VICE CHAIR THERNSTROM: Yes.

8 CHAIRMAN REYNOLDS: Commissioner Gaziano?

9 COMMISSIONER GAZIANO: Pass.

10 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

11 COMMISSIONER KIRSANOW: Yes.

12 CHAIRMAN REYNOLDS: Commissioner Heriot?

13 COMMISSIONER HERIOT: Yes.

14 CHAIRMAN REYNOLDS: I'm sorry?

15 COMMISSIONER HERIOT: Yes.

16 CHAIRMAN REYNOLDS: Commissioner Melendez?

17 COMMISSIONER MELENDEZ: Pardon? Could you  
18 repeat?

19 CHAIRMAN REYNOLDS: The motion reads --  
20 well, I move that the Commission submit -- approve  
21 submission of a request for \$9.4 million in  
22 appropriations for fiscal year 2010 to Congress as  
23 previously amended.

24 COMMISSIONER MELENDEZ: I oppose. No.

25 CHAIRMAN REYNOLDS: Okay. Commissioner

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1 Yaki?

2 COMMISSIONER YAKI: Abstain.

3 CHAIRMAN REYNOLDS: And I vote in the  
4 affirmative. Commissioner Gaziano?

5 COMMISSIONER GAZIANO: No. But let the  
6 record reflect I only object to the amount. I would  
7 ask for a higher amount.

8 CHAIRMAN REYNOLDS: The motion passes.

9 **VI. PROGRAM PLANNING**

10 CHAIRMAN REYNOLDS: Okay. Next up we have  
11 SAC rechartering. Bear with me. Oh, no, actually  
12 there is a letter dated February 5th that was received  
13 by the Staff Director from officials at English First  
14 and ProEnglish. They are requesting that the  
15 Commission reopen for 90 days the comment period on  
16 the briefing on specifying English as the common  
17 language of the workplace, every employer's right or  
18 violation of federal law.

19 The briefing was held on December 12,  
20 2008, and pursuant to Commission policy had a comment  
21 period of 30 days. Thus, the term to comment expired  
22 on January 11, 2009. Is there a second?

23 COMMISSIONER HERIOT: I second.

24 CHAIRMAN REYNOLDS: Discussion?

25 VICE CHAIR THERNSTROM: There hasn't been

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1 a motion, has there, Mr. Chairman, that --

2 CHAIRMAN REYNOLDS: Okay.

3 COMMISSIONER HERIOT: I think he is  
4 moving.

5 CHAIRMAN REYNOLDS: Okay.

6 VICE CHAIR THERNSTROM: You said there had  
7 been a request. Nobody from whatever they are called  
8 -- the English First, or whatever they are called, you  
9 did not make a motion that I heard.

10 CHAIRMAN REYNOLDS: Okay. Well, I move  
11 that we extend the period for 30 days, the comment  
12 period.

13 COMMISSIONER HERIOT: 30 days or 90 days?  
14 I thought they asked for 90.

15 STAFF DIRECTOR DANNENFELSER: But the  
16 Chairman is proposing 30.

17 CHAIRMAN REYNOLDS: Okay. They did.

18 COMMISSIONER HERIOT: I mean, is there any  
19 point to extending it for 30 days if they need 90 to  
20 do what they want to do?

21 CHAIRMAN REYNOLDS: Oh, okay. I move that  
22 we extend it for 90 days. Is there a second?

23 COMMISSIONER HERIOT: Second.

24 CHAIRMAN REYNOLDS: Okay. Discussion.  
25 Here are my views. I think 90 days is too long. I

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1 also think that opening the comment period, because we  
2 received a letter from an organization, is a precedent  
3 that I don't particularly like. However, we also  
4 received a request from Capitol Hill, from a  
5 Congressman, to extend the comment period. On that  
6 basis --

7 COMMISSIONER YAKI: Which member?

8 CHAIRMAN REYNOLDS: I believe it was Peter  
9 King.

10 COMMISSIONER YAKI: Oh.

11 CHAIRMAN REYNOLDS: On that basis, I would  
12 support the motion. But for the requests from Capitol  
13 Hill, I would not under these circumstances.

14 COMMISSIONER GAZIANO: Mr. Chairman, if it  
15 is all right, the letter from the member of Congress,  
16 was it so that the member of Congress could submit  
17 something, or was it so that we could receive comments  
18 from other organizations as well? Do you remember, or  
19 do you have that letter handy?

20 CHAIRMAN REYNOLDS: It wasn't a letter.  
21 It was a phone call.

22 COMMISSIONER GAZIANO: Okay.

23 CHAIRMAN REYNOLDS: And the idea was to  
24 essentially provide the time for the organizations  
25 that I mentioned.

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1                   COMMISSIONER YAKI: Let me ask you this.  
2 Was the bill -- was the phone call from his staff or  
3 from the Congressman?

4                   CHAIRMAN REYNOLDS: Staff.

5                   COMMISSIONER YAKI: I would just note that  
6 I have -- I know Congressman King and his legislative  
7 agenda. I would say that we have had requests in the  
8 past from members of the Judiciary Committee on items  
9 not related to the opening of a record. You know, as  
10 much as -- as much as I agree with the chair's  
11 reservations about this, and I certainly think that 90  
12 days is extraordinarily long for an organization that  
13 probably has testimony pretty much on print, on their  
14 print button, and I strongly object to the 90 days.

15                  COMMISSIONER KIRSANOW: Mr. Chair, I would  
16 suggest that maybe we shorten it to at least 60 days,  
17 at most 60 days. I think that is more than sufficient  
18 time, provided that we communicate that very quickly  
19 to those interested parties who have expressed an  
20 interest in submitting something. And I believe it  
21 was Representative Steven King, not Peter King.

22                  CHAIRMAN REYNOLDS: Thank you.

23                  VICE CHAIR THERNSTROM: Mr. Chairman, this  
24 is Vice Chair Thernstrom. Why do they need the extra  
25 time? I mean, we have had this record open. I think

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1 it does set a terrible precedent. We have got a  
2 backlog of overdue late reports, and now we are just  
3 slowing the process of the Commission up once again.  
4 You know, why couldn't they get whatever they have to  
5 say to us in a timely fashion.

6 COMMISSIONER GAZIANO: Mr. Staff Director?

7 COMMISSIONER HERIOT: Same reason we can't  
8 do anything in a timely fashion.

9 COMMISSIONER GAZIANO: Mr. Staff Director,  
10 let me go back to your comment on -- where is this --  
11 this report isn't ready to be sent to us anyway, is  
12 it?

13 STAFF DIRECTOR DANNENFELSER: No, it's  
14 not.

15 COMMISSIONER GAZIANO: Okay. At what  
16 stage -- do you remember at what stage this report is?

17 STAFF DIRECTOR DANNENFELSER: This is one  
18 where the staff has gone back to the panelists to ask  
19 them to review the transcripts, and they are pulling  
20 information together. It has not been written. The  
21 people involved in this have been pretty involved with  
22 moving the statutory report forward, so it is  
23 something that they would begin to work on in a couple  
24 of months.

25 COMMISSIONER GAZIANO: Okay. Good, good.

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1 Well, that affects my thought. I share some of the  
2 concerns about how long we keep it open, but keeping  
3 it open for some short length of time, however we  
4 define that, but will not keep it from -- the staff  
5 from doing most of its work or keep it from being sent  
6 to us.

7 STAFF DIRECTOR DANNENFELSER: No, I don't  
8 believe so.

9 COMMISSIONER HERIOT: By the way, on the  
10 notion of they just need to push a button, evidently  
11 it says in the letter here, "Cancer struck swiftly for  
12 an important leader for English language issues -- Jim  
13 Boulet of English First, who entered the hospital and  
14 died during the period." English First is a very tiny  
15 organization, and evidently one of their leaders died  
16 during the period directly after our briefing. And  
17 that is what has slowed them down. These things do  
18 happen.

19 It seems to me that it is extraordinary  
20 for us to open our record for 90 days on behalf of an  
21 organization that was aware of the briefing. But when  
22 a member of Congress requests us to do so, I think we  
23 should simply do it. We have been much later on  
24 things than 90 days.

25 CHAIRMAN REYNOLDS: Hello, folks. I'm

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1 sorry, I was disconnected. I'm just rejoining you.

2 COMMISSIONER YAKI: I have a point of  
3 information. Are we going to notify any group that  
4 has previously testified that -- or submitted  
5 testimony that the period -- if this were to prevail,  
6 that the period has been extended, and that they have  
7 an opportunity to supplement or replace their  
8 testimony as a result?

9 COMMISSIONER HERIOT: I've got no problem  
10 with that. And we could put a notice in the Federal  
11 Register as well.

12 COMMISSIONER GAZIANO: Sure. I think that  
13 is a good idea if we are going to extend the period at  
14 all.

15 CHAIRMAN REYNOLDS: Okay, folks. I had  
16 been disconnected.

17 COMMISSIONER YAKI: Well, we've known that  
18 for a long time.

19 (Laughter.)

20 CHAIRMAN REYNOLDS: Okay. Have we had  
21 discussion around the length of time, in terms of the  
22 postponement?

23 COMMISSIONER HERIOT: Gerry, I don't know  
24 if you were there when I -- I read from the letter  
25 here. The reason they want an extension is that one

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1 of their leaders got cancer and died during the  
2 period. And, of course, English First is a tiny  
3 organization, and if one of their leaders has -- has  
4 entered the hospital and died during the period, you  
5 know, you can see why this would throw them off their  
6 game.

7 CHAIRMAN REYNOLDS: But I'm not sure that  
8 justifies 90 days.

9 COMMISSIONER GAZIANO: I think  
10 Commissioner Kirsanow suggested 60 is --

11 COMMISSIONER KIRSANOW: Yes. I would move  
12 that we open up the record to accommodate further  
13 submissions for a period of 60 days from today's date.

14 COMMISSIONER GAZIANO: And I don't know if  
15 you were on the call, Mr. Chairman, but the Staff  
16 Director indicated that it is due to a lot of other  
17 work. The staff is still in the sort of early phases,  
18 so that that wouldn't significantly -- while the  
19 record is being held open, wouldn't significantly  
20 delay the report getting to us, because a lot of other  
21 work still needs to be done on it.

22 CHAIRMAN REYNOLDS: Okay. Well, then, I  
23 second Peter's motion. Do we want to vote at this  
24 point?

25 COMMISSIONER HERIOT: Yes. We probably

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1 should have done that as a motion to substitute, but  
2 let's just do it.

3 COMMISSIONER GAZIANO: Just one point of  
4 clarification. The request from the Congressional  
5 Office, was it for any specific period of time? Or  
6 that we just generally consider a sufficient time? Do  
7 you remember?

8 CHAIRMAN REYNOLDS: No, I don't.

9 COMMISSIONER HERIOT: Gerry, for the  
10 record, could you withdraw your first motion, so that  
11 we are least doing something generally in order here?

12 CHAIRMAN REYNOLDS: Motion withdrawn.

13 COMMISSIONER HERIOT: Now we can vote on  
14 Pete's motion.

15 CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

16 VICE CHAIR THERNSTROM: Yes.

17 CHAIRMAN REYNOLDS: Commissioner Gaziano?

18 COMMISSIONER GAZIANO: Yes.

19 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

20 COMMISSIONER KIRSANOW: Yes.

21 CHAIRMAN REYNOLDS: Commissioner Heriot?

22 COMMISSIONER HERIOT: Yes.

23 CHAIRMAN REYNOLDS: I'm sorry?

24 COMMISSIONER HERIOT: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Melendez?

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1 COMMISSIONER MELENDEZ: No.

2 CHAIRMAN REYNOLDS: Commissioner Yaki?

3 COMMISSIONER YAKI: No. And let the  
4 record reflect I wanted a much shorter period of time.

5 CHAIRMAN REYNOLDS: Okay. I vote for it,  
6 with the -- with reservations.

7 VICE CHAIR THERNSTROM: Well, if it's  
8 going to pass, I'm going to change my note to no as  
9 well, because I really don't agree with the 60 days.

10 CHAIRMAN REYNOLDS: Okay.

11 COMMISSIONER HERIOT: Did you all hear me,  
12 that this leader had cancer and died?

13 VICE CHAIR THERNSTROM: Look, 60 days -- I  
14 appreciate that, and now I understand the legitimacy  
15 of the request. But 60 days shouldn't be necessary.

16 COMMISSIONER HERIOT: I wish good health  
17 to all of us.

18 VICE CHAIR THERNSTROM: Pardon me?

19 COMMISSIONER HERIOT: I wish good health  
20 to all of us.

21 VICE CHAIR THERNSTROM: Look, I mean --

22 CHAIRMAN REYNOLDS: We voted. You folks  
23 can discuss that offline if you wish.

24 **VII. STATE ADVISORY COMMITTEE ISSUES**

25 CHAIRMAN REYNOLDS: Next item up is a

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1 motion that the Commission recharter the Oklahoma  
2 State Advisory Committee. Under this motion, the  
3 Commission appoints the following individuals to that  
4 Committee based on the recommendations of the Staff  
5 Director. Andrew Lester, Currie Ballard, Michael  
6 Barlow, James Bryant, Cara Watts, Anthony Douglas,  
7 Brandon Dutcher, Hannibal Johnson, Karen Langdon,  
8 David Lee, Mark Liotta, Kay Martin, and Michael  
9 Scaperlanda.

10 VICE CHAIR THERNSTROM: Mr. Chairman,  
11 before we do that, I want to make sure that the Court  
12 Reporter has it accurate that I have changed the last  
13 vote in opposition to the length of the time.

14 CHAIRMAN REYNOLDS: Please have the Court  
15 Reporter confirm that he has made the -- that he has  
16 made the change, or that he has --

17 STAFF DIRECTOR DANNENFELSER: He has  
18 indicated that he did make the change.

19 VICE CHAIR THERNSTROM: Okay.

20 CHAIRMAN REYNOLDS: Very good.

21 VICE CHAIR THERNSTROM: Thank you very  
22 much. We can go ahead.

23 CHAIRMAN REYNOLDS: The Commission also  
24 appoints Andrew Lester as Chair of the newly  
25 rechartered Oklahoma State Advisory Committee. The

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1 members will serve as uncompensated government  
2 employees. Under this motion, the Commission  
3 authorizes the Staff Director to execute the  
4 appropriate paperwork for the appointment. Is there a  
5 second?

6 COMMISSIONER KIRSANOW: Kirsanow. Second.

7 CHAIRMAN REYNOLDS: Discussion?

8 COMMISSIONER YAKI: This is Commissioner  
9 Yaki. I just want to raise the point and the  
10 objection that we -- as much lip service as was paid  
11 to the need for "balance" from previous acts, that in  
12 this particular SAC we have three members who are part  
13 of the same think-tank. Two of them are part of the  
14 same non-profits. There is substantial overlap  
15 amongst many of them. It hardly seems like there was  
16 any balance put on this fact, and I will be voting  
17 against it.

18 CHAIRMAN REYNOLDS: Okay. Mr. Staff  
19 Director, two questions. First, please confirm that  
20 Mr. Yaki's -- Commissioner Yaki's statements are --  
21 let me know if they are accurate. But, more  
22 importantly, let me know if you believe that overall  
23 we have a balanced SAC that reflects a diversity of  
24 viewpoints.

25 COMMISSIONER MELENDEZ: Commissioner

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1 Melendez here. I want -- the balance between gender,  
2 women, could you comment as to how that is balanced  
3 here? And also, I know that we have enough lawyers on  
4 the SAC.

5 STAFF DIRECTOR DANNENFELSER: Okay. I  
6 believe there is overall balance. The main objective  
7 of the balance is to -- under our administrative  
8 instruction is to ensure full and vigorous debate. We  
9 do not have quotas based on gender, race, and other  
10 categories of that nature, so we just do look for a  
11 balanced group of people who can provide vigorous  
12 debate on the issues that the Advisory Committee would  
13 address.

14 COMMISSIONER MELENDEZ: A question. I  
15 thought we were considering trying to get more women.  
16 And there is only three on this, my understanding,  
17 out of 13, is that right?

18 STAFF DIRECTOR DANNENFELSER: That's  
19 correct.

20 CHAIRMAN REYNOLDS: Mr. Staff Director,  
21 please describe the outreach that took place that  
22 resulted in these recommendations.

23 COMMISSIONER YAKI: Well, before he  
24 addresses that, I mean, whatever the outreach was, why  
25 is it that we have three people who all belong to the

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1 same think-tank on the SAC? Lester Dutcher and  
2 Scaperlanda all belong to the Oklahoma Council of  
3 Public Affairs.

4 COMMISSIONER GAZIANO: And why is that  
5 necessarily a bad thing.

6 COMMISSIONER YAKI: Well, when you are  
7 talking about -- when you are talking about three out  
8 of 13, that hardly seems it would be -- hardly seems  
9 it would be any sort of representative balance on  
10 anything. I am not talking about party affiliations.

11 I am not talking about the social clubs. I am  
12 talking about their professional capacities in a  
13 specific -- one specific organization. So, yes, I  
14 would have a problem with that --

15 COMMISSIONER GAZIANO: Are you saying  
16 their views on --

17 COMMISSIONER YAKI: -- Commissioner  
18 Gaziano. I would have a problem with the fact that  
19 two of them also happen to be members of the Oklahoma  
20 Branch of the National Association of Scholars.

21 COMMISSIONER GAZIANO: But are you  
22 suggesting that --

23 COMMISSIONER YAKI: Certainly, we can do  
24 better than picking three people from the same  
25 organization. And I would say that whether it was the

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1 NAACP, MALDEF, or The Federalist Society.

2 COMMISSIONER GAZIANO: I am just asking  
3 you whether you assume that their views on civil  
4 rights issues are all going to be identical, because  
5 they have the same -- one of the same affiliations.  
6 Is that your view?

7 COMMISSIONER YAKI: I am not going to  
8 answer the question whether I -- I don't know who each  
9 of --

10 COMMISSIONER GAZIANO: I think that is a  
11 ridiculous --

12 COMMISSIONER YAKI: I do know, however,  
13 that if we are picking three people from the same  
14 organization out of 13, we can certainly do a better  
15 job than that.

16 COMMISSIONER GAZIANO: So if three of them  
17 happen to be --

18 COMMISSIONER YAKI: That is my point,  
19 Commissioner Gaziano.

20 COMMISSIONER GAZIANO: If three of them  
21 happen to be --

22 COMMISSIONER YAKI: Then, you know, it is  
23 not worth talking about it.

24 CHAIRMAN REYNOLDS: Commissioner Yaki,  
25 overall, it appears we have a diversity of viewpoints.

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1 If our outreach was -- if it found --

2 COMMISSIONER YAKI: What is the definition  
3 of "diversity of viewpoints"?

4 CHAIRMAN REYNOLDS: -- then I am -- I am  
5 satisfied that we have a good -- we have a good list  
6 here.

7 COMMISSIONER YAKI: Well, of course you  
8 are satisfied. The diversity is all from your side of  
9 -- your side. So fine. I just told you, I just  
10 wanted to raise the point, and that I am going to be  
11 voting against it.

12 CHAIRMAN REYNOLDS: Understood.

13 COMMISSIONER YAKI: Move on.

14 COMMISSIONER GAZIANO: Well, for the  
15 record, I certainly think that one of the members of  
16 the -- one of the affiliations of three of the members  
17 is not -- does not represent their views and their  
18 lifetime knowledge of the area, and that that  
19 assumption certainly doesn't -- isn't very persuasive  
20 to me.

21 COMMISSIONER HERIOT: Remember that the  
22 Oklahoma Association of Scholars is -- these people  
23 don't work for that organization. They just happen to  
24 be members. You know, we have two people who are  
25 members of the Roman Catholic Church as well. You

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1 know, it is one of many, many, many groups that they  
2 probably belong to.

3           You know, I could see being more concerned  
4 about there being several people, you know, from --  
5 who all work for the same employer, but that's not the  
6 case here. It's not even close to the case. My guess  
7 is that if we were to examine these people more  
8 closely, you will find indeed that, you know, three of  
9 them are members of lots of different organizations.  
10 There are probably three Presbyterians in there  
11 somewhere.

12           COMMISSIONER YAKI: What is the Oklahoma  
13 Council of Public Affairs? I know what it is. Would  
14 you like to tell me what you think it is?

15           CHAIRMAN REYNOLDS: Well, what is the  
16 point?

17           COMMISSIONER YAKI: Then, don't give me  
18 this diversity boohoo. This is not diversity.

19           CHAIRMAN REYNOLDS: Well --

20           COMMISSIONER YAKI: Three out of 13  
21 belonging to the same thing, five of the people all  
22 overlap with one another in various settings. I  
23 didn't know Oklahoma was that small a state, but I  
24 guess it is.

25           CHAIRMAN REYNOLDS: Okay. Folks, this is

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1 a debate that has been ongoing for quite some time. I  
2 am sure we will --

3 COMMISSIONER YAKI: Let's just vote.  
4 Let's move on.

5 CHAIRMAN REYNOLDS: Very good. Vice Chair  
6 Thernstrom, how do you vote?

7 VICE CHAIR THERNSTROM: Abstaining on it.

8 CHAIRMAN REYNOLDS: Commissioner Gaziano?

9 COMMISSIONER GAZIANO: Yes.

10 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

11 COMMISSIONER KIRSANOW: Yes.

12 CHAIRMAN REYNOLDS: Commissioner Heriot?

13 COMMISSIONER HERIOT: Yes.

14 CHAIRMAN REYNOLDS: Commissioner Melendez?

15 COMMISSIONER MELENDEZ: Abstain.

16 CHAIRMAN REYNOLDS: Commissioner Yaki?

17 COMMISSIONER YAKI: N-O.

18 CHAIRMAN REYNOLDS: And I vote in the  
19 affirmative. Okay. The motion passes.

20 Next up, I move that the Commission  
21 recharter the Mississippi State Advisory Committee.  
22 Under this motion, the Commission appoints the  
23 following individuals to that Committee based on the  
24 Staff Director's recommendation. Bradley Clanton,  
25 Victoria Cintra, John Czarnetsky, Goyo de la Cruz,

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1 Susan Glisson, Elizabeth Powers, Ronald Rychlak,  
2 Walter Scott, Forest Thigpen, Leroy Walker, William --  
3 and William Woods.

4 The Commission also reappoints Mr. Clanton  
5 as Chair of the rechartered Mississippi State Advisory  
6 Committee. These members serve as uncompensated  
7 government employees. Under this motion, the  
8 Commission authorizes the Staff Director to execute  
9 the appropriate paperwork for the appointment. Is  
10 there a second?

11 COMMISSIONER HERIOT: Second.

12 CHAIRMAN REYNOLDS: Discussion?

13 COMMISSIONER YAKI: This is Commissioner  
14 Yaki. I just wanted to note for the record that of  
15 the two SACs that we are appointing today only five  
16 out of 24 are women. And I will just note that  
17 without drawing any inferences on diversity or  
18 outreach. And let's vote.

19 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
20 how do you vote?

21 VICE CHAIR THERNSTROM: I vote yes on  
22 this.

23 CHAIRMAN REYNOLDS: Commissioner Gaziano?

24 COMMISSIONER GAZIANO: Yes.

25 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

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1                   COMMISSIONER KIRSANOW:   Abstain.   Only  
2 because I didn't have an opportunity to go through  
3 each of the biographies.

4                   CHAIRMAN REYNOLDS:   Commissioner Heriot?

5                   COMMISSIONER HERIOT:   Yes.

6                   CHAIRMAN REYNOLDS:   Commissioner Melendez?

7                   COMMISSIONER MELENDEZ:   No.

8                   CHAIRMAN REYNOLDS:   Commissioner Yaki?

9                   COMMISSIONER YAKI:   Ditto.

10                  CHAIRMAN REYNOLDS:   I vote in the  
11 affirmative.  The motion carries.

12                  I move to adjourn.  Is there a second?

13                  COMMISSIONER GAZIANO:   Could I -- Mr.  
14 Chairman, I did -- I don't know if we inadvertently  
15 skipped the --

16                  COMMISSIONER YAKI:   I second.  Call the  
17 question.

18                  VICE CHAIR THERNSTROM:   Second.

19                  COMMISSIONER GAZIANO:   -- the Staff  
20 Director's Report.  I -- he may have had some items,  
21 and I just wanted to -- to actually commend him for  
22 something in the report.  Did we skip that item in the  
23 agenda?

24                  STAFF DIRECTOR DANNENFELSER:   We did.

25                  CHAIRMAN REYNOLDS:   I'm sorry.  Please

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1 repeat --

2 COMMISSIONER GAZIANO: I think we skipped  
3 the Staff Director's Report in the agenda, and I  
4 wanted to hear his report and actually commend him.

5 CHAIRMAN REYNOLDS: Okay.

6 VICE CHAIR THERNSTROM: I'd like to call  
7 the question and adjourn.

8 CHAIRMAN REYNOLDS: Okay. All in favor,  
9 please say aye.

10 COMMISSIONER HERIOT: No. We skipped an  
11 item on the agenda.

12 COMMISSIONER YAKI: Aye.

13 VICE CHAIR THERNSTROM: Aye.

14 CHAIRMAN REYNOLDS: Okay. Let's vote to  
15 table discussion of the Staff Director's Report. All  
16 in favor, please say -- is there a second?

17 COMMISSIONER YAKI: Second.

18 CHAIRMAN REYNOLDS: All in favor, please  
19 say aye.

20 (Chorus of ayes.)

21 Objections?

22 COMMISSIONER HERIOT: No.

23 COMMISSIONER GAZIANO: No.

24 **IX. ADJOURN**

25 CHAIRMAN REYNOLDS: Okay. I move to

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1 adjourn. Is there a second?

2 COMMISSIONER YAKI: Second.

3 CHAIRMAN REYNOLDS: Vice Chair Thernstrom,  
4 how do you vote?

5 VICE CHAIR THERNSTROM: Yes.

6 CHAIRMAN REYNOLDS: Commissioner Gaziano?

7 COMMISSIONER GAZIANO: If I've lost the  
8 motion to have the Staff Director, I'll vote yes, with  
9 the understanding that I would have liked to have  
10 heard it.

11 CHAIRMAN REYNOLDS: Commissioner Kirsanow?

12 COMMISSIONER KIRSANOW: Given Commissioner  
13 Gaziano's statement, I vote yes also.

14 CHAIRMAN REYNOLDS: Commissioner Heriot?

15 COMMISSIONER HERIOT: I'll vote no on the  
16 grounds that it is absolutely ridiculous that we skip  
17 the Staff Director's Report.

18 CHAIRMAN REYNOLDS: Commissioner Melendez?

19 COMMISSIONER MELENDEZ: Abstain.

20 CHAIRMAN REYNOLDS: Commissioner Yaki?

21 COMMISSIONER YAKI: Yes.

22 CHAIRMAN REYNOLDS: I'm sorry?

23 COMMISSIONER YAKI: Yes.

24 CHAIRMAN REYNOLDS: And I vote in the  
25 affirmative. The motion carries. Folks, have a good

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1 day.

2 (Whereupon, at 11:05 a.m., the proceedings  
3 in the foregoing matter were concluded.)  
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