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U.S. COMMISSION ON CIVIL RIGHTS

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MEETING           **UNEDITED**

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WEDNESDAY, NOVEMBER 18, 2015

+ + + + +

The Commission convened in Suite 1150 at  
1331 Pennsylvania Avenue, Northwest, Washington, D.C.  
at 10:00 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

PATRICIA TIMMONS-GOODSON, Vice Chair

ROBERTA ACHTENBERG, Commissioner\*

GAIL L. HERIOT, Commissioner\*

PETER N. KIRSANOW, Commissioner\*

DAVID KLADNEY, Commissioner\*

KAREN K. NARASAKI, Commissioner

MAURO MORALES, Staff Director

JENNIFER CRON HEPLER, Solicitor, Parliamentarian

\* *Present via telephone*

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STAFF PRESENT:

EVELYN BOHOR

IVY L. DAVIS, Director, ERO

PAMELA DUNSTON, Chief, ASCD

ANTHONY FELIX, Intern

DARREN FERNANDEZ, ESQ., Civil Rights Analyst

ANGELA FRENCH-BELL

SEAN GOLIDAY

ALFREDA GREENE

ASHLEY MACAYSA, Intern

TINALOUISE MARTIN, Director, OM

LENORE OSTROWSKY, Acting Chief, PAU

MAUREEN RUDOLPH, General Counsel

PILAR VELASQUEZ-MCLAUGHLIN, Associate General  
Counsel

MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART

ALEC DEULL

CLARISSA MULDER

AMY ROYCE

ALISON E. SOMIN

KIMBERLY TOLHURST

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

(10:00 a.m.)

CHAIRMAN CASTRO: Calling the meeting to  
order.

This is a meeting of the U.S. Commission  
on Civil Rights. It is currently 10:00 a.m. Eastern  
Time on November 18, 2015. This meeting is taking  
place at the Commission's Headquarters located at 1331  
Pennsylvania Avenue, N.W. in Washington, D.C.

I'm Chairman Marty Castro. Those  
Commissioners who are present with me at the meeting  
are Commissioners Narasaki and our Vice Chair Judge  
Timmons-Goodson.

Participating by phone are Commissioners  
Kladney, Kirsanow, Achtenberg and Heriot. We  
understand Commissioner Yaki will not be joining the  
call by phone or in person.

A quorum of the Commission is present. Is  
the Court Reporter present? Great.

Is the Staff Director present?

MR. MORALES: I am present.

CHAIRMAN CASTRO: Okay. So, the meeting  
will now come to order.

The first item on the Agenda is the

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1 Approval of the Agenda.

2 **I. APPROVAL OF AGENDA**

3 CHAIRMAN CASTRO: I know there will be  
4 some amendments as well, but, first, let me make the  
5 motion to approve the Agenda. Is there a second?

6 COMMISSIONER NARASAKI: I second.

7 CHAIRMAN CASTRO: Okay. Are there any  
8 amendments?

9 COMMISSIONER ACHTENBERG: Mr. Chairman?

10 CHAIRMAN CASTRO: Yes, Commissioner  
11 Achtenberg?

12 COMMISSIONER ACHTENBERG: Yes, Mr.  
13 Chairman, I'd like to amend the Agenda to note the  
14 discussion and vote on Part B Findings and  
15 Recommendations for Peaceful Coexistence for  
16 consideration at the December meeting. And, I will be  
17 providing a draft no less than a week in advance of the  
18 December meeting for the Commissioners' consideration.

19 CHAIRMAN CASTRO: Okay. Is there a  
20 second?

21 VICE CHAIR TIMMONS-GOODSON: Second.

22 CHAIRMAN CASTRO: Any other amendments?

23 Well, actually, I have two. I am moving  
24 to amend the Agenda to remove a discussion on the Birth

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1 Certificate issue in Texas. It's an evolving issue.

2 As you all know, we wrote a letter to Texas  
3 asking them to cease and desist their failure to provide  
4 U.S. Citizen children of undocumented parents their  
5 Birth Certificates.

6 There is litigation currently going on,  
7 but we're exploring what other steps we can take as a  
8 Commission. We'll have something in December to  
9 present to the Commission in terms of some potential  
10 ideas on how to address that.

11 And, the other item is we wanted to add a  
12 review of a press release in the statement on the  
13 passing of the former EEOC Chair. You all should have  
14 gotten that in your packets.

15 And then, we also have some guests from the  
16 U.S. Department of Agriculture Office of Civil Rights  
17 who want to make a brief presentation to us. So, I'd  
18 like to add them to the Agenda as well.

19 Do I have a second?

20 COMMISSIONER NARASAKI: I second.

21 CHAIRMAN CASTRO: Okay. Any other  
22 amendments?

23 (No response.)

24 CHAIRMAN CASTRO: Okay, all those in favor

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1 of the Agenda as amended, say aye?

2 (Chorus of aye.)

3 CHAIRMAN CASTRO: Any opposed?

4 (No response.)

5 CHAIRMAN CASTRO: Any abstentions?

6 (No response.)

7 CHAIRMAN CASTRO: Okay.

8 COMMISSIONER HERIOT: I guess I abstain.

9 I think we need to go back to Robert's Rules of Order  
10 a little bit better.

11 CHAIRMAN CASTRO: Okay. We'll look at  
12 that that we've got in the General Counsel, so maybe  
13 she could counsel --

14 COMMISSIONER HERIOT: But, what you  
15 should do is like -- hold on, hold on, hold on.

16 Just whoever made the original motion and  
17 whoever seconded it needed to put on the record that  
18 these were friendly amendments and then we can vote on  
19 them as a package.

20 CHAIRMAN CASTRO: Okay, Commissioner  
21 Heriot. We've not done that before, but if you'd like  
22 to do that, we can do that now.

23 Would the original mover and seconder that  
24 --

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1                   COMMISSIONER NARASAKI: I recognize that  
2 these are friendly amendments and accept them.

3                   CHAIRMAN CASTRO: And, I think -- who  
4 seconded it? Was that you, Madam Vice Chair?

5                   VICE CHAIR TIMMONS-GOODSON: I seconded  
6 the amendment of the Agenda to remove the Peaceful  
7 Coexistence.

8                   CHAIRMAN CASTRO: Okay.

9                   COMMISSIONER HERIOT: Who seconded the  
10 original motion?

11                  VICE CHAIR TIMMONS-GOODSON: I did.

12                  COMMISSIONER HERIOT: So, all you have to  
13 do is say, these are friendly amendments.

14                  VICE CHAIR TIMMONS-GOODSON: I thought I  
15 just did, but okay. These are friendly amendments.

16                  COMMISSIONER HERIOT: If it's a motion,  
17 though, to the original motion.

18                  CHAIRMAN CASTRO: All right, we're  
19 covered then.

20                  Okay, so anyway, speaking of General  
21 Counsel, I'd like to turn it over to our Staff Director  
22 to introduce our new General Counsel.

23                                   **INTRODUCTION OF GENERAL COUNSEL**

24                                   **MAUREEN RUDOLPH**

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1 MR. MORALES: Thank you, Mr. Chairman. I  
2 appreciate a moment of your time here.

3 I'd like to just, again, take a moment of  
4 the Commission's time here to introduce our new General  
5 Counsel. Her name is Maureen Rudolph. She comes from  
6 the Department of Justice, has over 15 years of  
7 experience in litigation and civil rights and various  
8 components throughout the Department of Justice.

9 And, she's been with us now for about I  
10 believe four and a half or five weeks and been very  
11 helpful in a variety of matters.

12 And so, I just wanted to take a moment to  
13 introduce her. I don't know if you'd like to say  
14 anything real briefly, General Counsel?

15 MS. RUDOLPH: Good morning, everyone.

16 My name is Maureen Rudolph. I am your new  
17 General Counsel for the Commission.

18 I wanted to take a moment to introduce  
19 myself on a personal level and also on a professional  
20 level.

21 I grew up in a military family. My father  
22 was in the Air Force. He was career in the Air Force  
23 and retired from the Air Force.

24 My mother was an English as a Second

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1 Language Teacher.

2 I have learned a lot from both of them over  
3 the years growing up. We lived in many different  
4 locations. We lived overseas. We lived all over the  
5 United States.

6 I currently have two children, a boy and  
7 a girl, who I love quite dearly and who you will hear  
8 me speak about. I also have a wonderful long term  
9 supportive partner who is also my best friend and I'm  
10 very blessed to have that in my life.

11 On a professional note, as the Staff  
12 Director just said, I have 15 years of experience  
13 working for the Department of Justice. In that  
14 capacity, I have worked with Congress on substantive  
15 legislation, budget requests, I have also litigated  
16 cases in front of District Courts, Circuit Courts, and  
17 the Supreme Court.

18 I have worked with federal agencies on  
19 policy matters and on regulations. I have negotiated  
20 an international declaration. I was part of the  
21 delegation who negotiated the United Nations  
22 Delegation on the Rights of Indigenous Peoples. In  
23 that capacity, I traveled to Geneva and also negotiated  
24 some of that declaration here in Washington, D.C.

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1                   Those were wonderful experiences that I've  
2                   had in my life. My primary areas of focus have been  
3                   mainly in the Native American issues and also on natural  
4                   resources and environmental law issues.

5                   I am thrilled to be here with you. I look  
6                   forward to working with all of you as we carry out the  
7                   mission of the Commission.

8                   Thank you so much.

9                   CHAIRMAN CASTRO: Well, welcome Madam  
10                  General Counsel. I know in my interactions with you  
11                  over the last few weeks, you already made a tremendous  
12                  contribution and we look forward to continuing to see  
13                  that in your term.

14                  Thanks.

15                  Next on the Agenda, what I'd like to do is  
16                  you all did receive the statement that we have prepared  
17                  mourning the loss of Jacqueline Berrien. I am going  
18                  to read the statement and then ask for a vote, a motion  
19                  and a vote so that it is a press release that would be  
20                  issued by the Commission.

21                  The U.S. Commission on Civil Rights mourns  
22                  the passing of Jacqueline Berrien, recent Chairwoman  
23                  of the EEOC. That's the headline.

24                  The United States Commission on Civil

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1 Rights joins the nation in mourning the passing of  
2 former EEOC Chairwoman Jacqueline Berrien,  
3 accomplished civil rights lawyer and champion of civil  
4 rights over a long and successful career.

5 Among her many accomplishments prior to  
6 chairing the EEOC, she served as the Assistant General  
7 Counsel -- I'm sorry, Assistant Counsel litigating  
8 voting rights and school desegregation cases at the  
9 NAACP Legal Defense Fund, as an Associate Director and  
10 Counsel at the Ford Foundation and as a faculty member  
11 at Harvard Law School.

12 Chairwoman Berrien graduated from Oberlin  
13 College and Harvard Law School and then clerked for a  
14 Federal Judge before joining the Lawyers Committee for  
15 Civil Rights and the Women's Rights Project of the ACLU.

16 At the EEOC, she increased investments in  
17 staffing, training and technology that increased  
18 productivity and substantially reduced backlogs of  
19 pending charges despite increased numbers of  
20 discrimination filings.

21 During her tenure, the Agency won the  
22 largest award to date under the Americans with  
23 Disabilities Act in EEOC v. Hill Country Farms.

24 Also under her leadership, the EEOC issued

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1 important new guidance on the use of arrest and  
2 conviction records in employment decisions.

3 Martin R. Castro, Chairman of the U.S.  
4 Commission on Civil Rights stated, "the nation has lost  
5 a tremendous public servant and the civil rights  
6 community has lost a leader."

7 Chair Berrien's was a life well led, not  
8 only for herself but also for her nation. She leaves  
9 a great legacy for the rest of us to follow.

10 And then, it concludes with our standard  
11 language, the U.S. Commission on Civil Rights is an  
12 independent bipartisan agency charged with advising  
13 the President and Congress on civil rights matters and  
14 issuing federal civil rights enforcement report. And,  
15 it goes on to give our website.

16 So, can I entertain a motion?

17 VICE CHAIR TIMMONS-GOODSON: Mr. Chair, I  
18 move that we issue that press release.

19 CHAIRMAN CASTRO: Is there a second?

20 COMMISSIONER NARASAKI: Mr. Chair, I  
21 second it. I had the pleasure of working with Jackie  
22 for over 20 years and it is, indeed, a huge loss for  
23 the civil rights community.

24 CHAIRMAN CASTRO: All right, would any

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1 other Commissioner like to add some words to that? If  
2 not, then I'll call it for a vote. All those in favor  
3 signify by saying aye?

4 (Chorus of aye.)

5 CHAIRMAN CASTRO: Any opposed?

6 (No response.)

7 CHAIRMAN CASTRO: Any abstentions?

8 (No response.)

9 CHAIRMAN CASTRO: Okay, we'll direct our  
10 Office of Press to send that out today.

11 And now, I'd like to invite to the podium  
12 very quickly here, let me pull this up, good friends  
13 of ours from the U.S. Department of Agriculture Office  
14 of Civil Rights, in particular, Fred Pfaeffle Arana who  
15 is the Deputy Assistant Secretary for Civil Rights who  
16 we've had the opportunity to work with on a number of  
17 initiatives. He has a brief presentation for us.

18 Mr. Assistant Secretary?

19 MR. PFAEFFLE-ARANA: Good morning, Mr.  
20 Chairman. Good morning, Commissioners.

21 Thank you for the opportunity to thank the  
22 Commission on a very important project that we worked  
23 together recently.

24 My name is Frederick Pfaeffle-Arana and I

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1 am Deputy Assistant Secretary for Civil Rights at the  
2 Department of Agriculture.

3 I'd like to start out with saying -- by  
4 saying that with the help and support of the U.S.  
5 Commission on Civil Rights, this past November 4th and  
6 5th, UDSA, EPA and a coalition of 14 sponsoring federal  
7 agencies held the inaugural National Civil Rights  
8 Conference entitled 21st Century Civil Rights  
9 Integrity, Integration, Innovation Initiative.

10 It was held at the United States Institute  
11 of Peace in Washington, D.C. It was a conference that  
12 was the first of its kind and provided a collaborative  
13 forum for federal civil rights professionals to receive  
14 training, share best practices and explore  
15 crosscutting issues in enforcement and compliance.

16 On behalf of the Executive Planning  
17 Committee for the conference, we thank the Commission  
18 and also express our gratitude to Chairman Castro for  
19 his participation and leadership and to Vice Chair  
20 Patricia Timmons-Goodson for delivering her salient  
21 keynote address on November the 4th.

22 Justice to Ms. Goodson's remarks  
23 exemplified how the civil rights community can work  
24 together to meeting seemingly insurmountable

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1 challenges that we face in common.

2 More specifically, at the conference, over  
3 275 civil rights professionals from 20 different  
4 federal agencies participated in workshops and  
5 training in some of the most exacting areas facing  
6 government and its delivery of services to the people  
7 of the United States, ranging from environmental  
8 justice, fair housing, disabilities, discrimination  
9 and social media and technology, limited English  
10 proficiency, religious discrimination, sexual and  
11 other forms of harassment and how to hold the government  
12 accountable to comply with civil rights laws and  
13 regulations in and outside of the work environment.

14 The conference proved an important tool  
15 that aligns with the mission of this Commission to aid  
16 in development of national civil rights policy and  
17 enforcement of federal civil rights laws to help  
18 prevent and address discrimination based on race,  
19 color, religion, sex, age, disability or national  
20 origin or in the administration of justice.

21 So, to sum up, we invite the Commission and  
22 the coalition of agencies to continue our joint  
23 efforts, leading to the success of this very important  
24 conference to allow us to jointly advance and enhance

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1 civil rights through integrity, integration,  
2 innovation and initiative.

3 Thank you very much for your time this  
4 morning.

5 CHAIRMAN CASTRO: Thank you, Mr. Deputy  
6 Assistant Secretary. You and your staff and your  
7 Agency taking the lead on putting this together.

8 You know, we've often been talking about  
9 more collaboration between our Agency and our sister  
10 agencies in the struggle for civil rights and the  
11 federal government. And, this was really a wonderful  
12 model that I hope we continue to replicate.

13 I'd actually like the Vice Chair to maybe  
14 say a few words because she was kind enough to deliver  
15 the keynote address for us on behalf of the Agency.

16 VICE CHAIR TIMMONS-GOODSON: Thank you,  
17 Mr. Chair.

18 I first want to thank you for your  
19 leadership in involving our agency in this and I'd like  
20 to thank our Staff Director for all of his efforts and  
21 on helping move us along and get us in the place that  
22 we want to be.

23 I was proud to represent the Agency in this  
24 first of its kind effort. I hope that it will not be

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1 the last. In my eyes, it was a tremendous success.

2 Not only did I deliver the keynote on  
3 behalf of our Agency, but, I also took the time to attend  
4 a number of the sessions, three to be exact. And, I  
5 found each of the presenters extremely knowledgeable  
6 and did a tremendous job sharing all of the knowledge  
7 that they had.

8 And so, again, I hope that this will not  
9 be the last one. If we're not able to put it together  
10 annually, and I say that because it was clear all of  
11 the hard work and effort that went in to it, so if we're  
12 not able to do it annually, I hope that we will consider  
13 at least every other year, bringing these agencies  
14 together to discuss all that we have in common. And,  
15 if for no other reason, to continue to encourage one  
16 another.

17 We all admit that this is difficult work,  
18 extremely difficult work. And, sometimes, we're not  
19 able to, as the song says, you need to encourage  
20 yourself, sometimes, encouraging yourself is not  
21 enough. We need the encouragement of others.

22 And so, I hope that we will come together  
23 often. And, again, thank you so very much, Mr.  
24 Pfaeffle, for all of your hard work and the organizers

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1 and we were pleased to be a part of it.

2 MR. PFAEFFLE-ARANA: Thank you very much.

3 CHAIRMAN CASTRO: Thank you, Mr. Deputy  
4 Assistant.

5 Okay, now we'll move on to our formal  
6 Agenda. The first item is a discussion on the status  
7 of pending Commission Reports. So, we'll ask Angela  
8 French-Bell to come to the microphone, our head of OCRE.

9 **II. PROGRAM PLANNING**

10 **STATUS ON PENDING COMMISSION REPORTS**

11 MS. FRENCH-BELL: Good morning, Chairman  
12 Castro, Vice Chair Timmons-Goodson, Commissioners,  
13 Special Assistants and staff.

14 Today, we wanted to cover a couple of  
15 things. First of all, we wanted to cover the status  
16 of our pending reports. Then we wanted to talk about  
17 the timeline for our statutory report. Followed by,  
18 hopefully, obtaining your approval for our proposed  
19 town hall meetings.

20 So, the first item on the Agenda is an  
21 update on our OCRE reports.

22 We have already submitted to you three  
23 reports, namely, State Immigration, Civil Rights for  
24 Vets and Stand Your Ground.

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1                   We are awaiting comments from a few  
2 Commissioners on State Immigration and we hope to  
3 receive those soon.

4                   We also wanted to get feedback from you in  
5 terms of what would be a good a date to have the comments  
6 come back for the Civil Rights for Vets report.

7                   Initially, we set November 20th as a good  
8 date. Clearly, that's not going to work. So, we  
9 wanted to get you input about a date that would be more  
10 appropriate.

11                   CHAIRMAN CASTRO: What's the next date for  
12 the next report comments?

13                   MS. FRENCH-BELL: I think it's December  
14 21st or close to it.

15                   CHAIRMAN CASTRO: Okay. So, then maybe  
16 sometime in early December? I don't know, what's the  
17 first week, sometime maybe towards the end of the first  
18 week of December. Is that doable for folks? Pull up  
19 your calendars.

20                   Let's see, how's the -- well, we've got our  
21 meeting December 11th, so why don't we have them turned  
22 in by then?

23                   MS. FRENCH-BELL: That's wonderful.  
24 Thank you.

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1 CHAIRMAN CASTRO: Will that work?

2 MS. FRENCH-BELL: Yes.

3 CHAIRMAN CASTRO: And, that's for Vets,  
4 right?

5 MS. FRENCH-BELL: That's for Vets.

6 CHAIRMAN CASTRO: Okay.

7 MS. FRENCH-BELL: Thank you.

8 CHAIRMAN CASTRO: Okay. Do we need to  
9 adjust any others or is that --

10 MS. FRENCH-BELL: I'm thinking we  
11 probably will need to adjust Stand Your Ground, but I'm  
12 not sure if you will be able to get it in by the 21st  
13 if that one's due on the 11th. But, I definitely would  
14 like your feedback.

15 CHAIRMAN CASTRO: How do folks feel? Do  
16 we just leave it for now? Yes, I think we can do it.

17 MS. FRENCH-BELL: Thank you, I like that.

18 CHAIRMAN CASTRO: Folks can spend some of  
19 their holiday downtime revising.

20 Please proceed.

21 MS. FRENCH-BELL: Thank you.

22 And, we have ENDA and SVRA, they are  
23 currently in the editorial process. So, we hope to  
24 have those reports to you within the coming weeks.

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1                   Police Use of Force is more than halfway  
2 written, so we'll be coming to you on schedule, the  
3 schedule we provided to you earlier.

4                   As far as the Quite Crisis Report Update,  
5 we are working with Jason and Commissioner Narasaki and  
6 we've begun the writing stage. The editor --

7                   CHAIRMAN CASTRO: Remind us, what is the  
8 quite Crisis?

9                   MS. FRENCH-BELL: It's the Native  
10 American court looking at the infrastructure.

11                   CHAIRMAN CASTRO: Right, yes.

12                   MS. FRENCH-BELL: So, that one, we're in  
13 the process of writing, so we should be able to complete  
14 our April schedule for that report as well. And, we  
15 will continue to provide details on that as we move  
16 forward.

17                   Were there any questions on the report  
18 update portion of our presentation?

19                   CHAIRMAN CASTRO: Commissioner Narasaki,  
20 did you have something?

21                   COMMISSIONER NARASAKI: Yes. So, as you  
22 know, we've been playing catchup because the Commission  
23 went a little bit of time before you came on board and  
24 Pat and I came on board without sufficient research

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1 staff. So, we developed a backlog.

2 And then, on top of that, there were some  
3 reports that Commissioners either were -- the  
4 Commission was either asked by Members of Congress or  
5 the Commission was interested in trying to revisit an  
6 update and the Native American report is one of them.

7 But, we realize, we have come to see the  
8 wisdom that you had offered in terms of the reality that  
9 our staff is still overtaxed. And, particularly,  
10 since we don't have our budget in place, fully in place  
11 for next year.

12 So, I am offering up a motion that we put  
13 on hold, that we suspend work on two of the reports,  
14 the anti-Semitism on Campus and Voter Fraud, Voter  
15 Intimidation until the Commission can catch up on the  
16 backlog and on the reports that we have pending from  
17 last year. And then, we will revisit it as we get,  
18 hopefully, closer to getting caught up and having  
19 sufficient staff.

20 So, I offer up that motion.

21 VICE CHAIR TIMMONS-GOODSON: I'll second  
22 that motion.

23 CHAIRMAN CASTRO: And, just to clarify,  
24 that means we would continue to finish off the Native

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1 American report and that we would next take in turn the  
2 immigration --

3 COMMISSIONER NARASAKI: Yes, the Voter  
4 Fraud, Voter Intimidation, those two reports we -- as  
5 the Director noted, we have already started on the Quiet  
6 Crisis and are fairly far along and we have -- they have  
7 hired a consultant so that we have sufficient staff  
8 capacity to do that.

9 Hopefully, that staff will be able -- that  
10 consultant will be able to finish that and then quickly  
11 move on to the Voter Fraud, Voter Intimidation report.

12 CHAIRMAN CASTRO: The immigration?

13 COMMISSIONER NARASAKI: I'm sorry, yes,  
14 to move on to the Effective Undocumented Immigration  
15 on Black Workers, sorry about that.

16 CHAIRMAN CASTRO: Okay. So, we have  
17 motion and a second, any discussion?

18 Hearing none, I will take a roll call vote.

19 Madam Vice Chair, how to you vote?

20 VICE CHAIR TIMMONS-GOODSON: Yes.

21 CHAIRMAN CASTRO: Commissioner Narasaki,  
22 how do you vote?

23 COMMISSIONER NARASAKI: Yes.

24 CHAIRMAN CASTRO: Commissioner Kladney,

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1 how do you vote?

2 COMMISSIONER KLADNEY: Yes.

3 CHAIRMAN CASTRO: Commissioner Kirsanow,  
4 how do you vote?

5 COMMISSIONER KIRSANOW: Abstain.

6 CHAIRMAN CASTRO: Commissioner  
7 Achtenberg, how do you vote?

8 COMMISSIONER ACHTENBERG: Yes.

9 CHAIRMAN CASTRO: Commissioner Heriot,  
10 how do you vote?

11 COMMISSIONER HERIOT: This is a hard one,  
12 actually. I think I'm going to vote no given that these  
13 were the two reports I was most interested in out of  
14 the ones that we were doing. But, I agree that we need  
15 to cut back on some of the reports that we're working  
16 on. But, I think this has been has been going on too  
17 late and my instinct is that the reports are not being  
18 carved back in the appropriate way, so I vote no.

19 CHAIRMAN CASTRO: Okay, so I vote yes.

20 The motion passes with one, two, three,  
21 four, five yeses, one no and one abstention.

22 Okay, continue please.

23 MS. FRENCH-BELL: Thank you. That was a  
24 very helpful motion and it's definitely appreciated.

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1                   The next item on the Agenda is the  
2 Environmental Justice Timeline.

3   **II. PROGRAM PLANNING**  
4   **TIMELINE ON TOWN HALL PLAN FOR**  
5   **2016 STATUTORY ENFORCEMENT REPORT ON**  
6   **ENVIRONMENTAL JUSTICE**

7                   MS. FRENCH-BELL: so, we just wanted to  
8 cover a couple of the major dates that are on that  
9 timeline that we proposed that is currently in the  
10 Commissioners folder.

11                   The first one is December 2015. That's  
12 the date that the interrogatories will be sent to  
13 federal agencies. And, the reason that we did that was  
14 because we were also working collaboratively with the  
15 federal agencies and we wanted to be able to ensure that  
16 the information that we requested from them wasn't  
17 information that we already would be able to obtain in  
18 other ways.

19                   The second date is on May 20th. The  
20 initial draft will be sent to the Staff Director. The  
21 reason that we chose that date is because, one, we  
22 wanted to ensure that we would be able to have all the  
23 information and properly analyze it following the town  
24 hall meetings.

1           The second reason is that we wanted to  
2           ensure that the report is of the highest quality. We  
3           have heard before that there may be some reason for us  
4           to apply even more effort to ensure that the quality  
5           of our reports is high.

6           And, we want to be able to do that as well  
7           as we want to be able to ensure that we're offering you  
8           the independent research that you requested that we  
9           have in our reports.

10           So, for that reason, that date is set at  
11           May 20th.

12           One of the next important dates is that the  
13           draft is submitted to the Commissioners on May 30, 2016.

14           We set that date because we wanted to  
15           ensure that there would be at least three months for  
16           Commissioners to look at the report and to make  
17           revisions to it.

18           Initial comments would be due on June 30th.  
19           Commissioners' vote on the final report would be July  
20           15th. Statements and concurrences would be due August  
21           15th and rebuttals and concurrences and dissents would  
22           be due September 15th.

23           We couldn't have it due any later than that  
24           because we had to allow enough time for staff to be able

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1 to prepare for putting the report on the web and to do  
2 the finalizing of the report.

3 So, that is our proposal.

4 COMMISSIONER HERIOT: Mr. Chairman?

5 CHAIRMAN CASTRO: Yes, Commissioner  
6 Heriot?

7 COMMISSIONER HERIOT: I just have a  
8 comment here.

9 I would very much like to see a draft of  
10 the discovery requests. I think one of the places that  
11 the Commission staff has gone wrong in the past is not  
12 asking for the right things. And so, I think it's  
13 important that we see drafts of the discovery requests.

14 MS. FRENCH-BELL: I don't know if that's  
15 a practice we've done in the past. We will leave that  
16 decision to our Staff Director, but we will submit it  
17 to him in enough time to allow him to make that decision.

18 COMMISSIONER HERIOT: Well, then I make a  
19 motion that we be given copies of the drafts of the  
20 discovery requests.

21 Again, this is an area where the staff has  
22 gone wrong in the past.

23 COMMISSIONER KIRSANOW: Kirsanow,  
24 second.

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1 CHAIRMAN CASTRO: Okay. Just a second.  
2 There's some consultation going on here that may be  
3 relevant.

4 COMMISSIONER HERIOT: I've actually been  
5 told that it is our past practice. But, on occasion,  
6 I have not gotten them.

7 CHAIRMAN CASTRO: You know, in the time  
8 I've been here, I've seen in some instances where we  
9 did get it, others where we didn't. I don't know that  
10 we've been consistent with that. But, I do recall --

11 MR. MORALES: Mr. Chair?

12 CHAIRMAN CASTRO: Yes, the Staff Director  
13 will --

14 MR. MORALES: I'm sorry, Mr. Chairman,  
15 I've been informed and I understand there's an AI that  
16 requires that. And so, I'll work with the General  
17 Counsel and we'll make sure that we apply that correctly  
18 and make sure that we adhere to the AI.

19 CHAIRMAN CASTRO: Okay. In light of  
20 that, I don't think we'll need a motion.

21 COMMISSIONER HERIOT: Okay, I think that  
22 I withdraw my motion.

23 CHAIRMAN CASTRO: I don't think we need a  
24 motion since there's an AI on it.

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1 COMMISSIONER HERIOT: Okay, I withdraw.

2 CHAIRMAN CASTRO: Okay.

3 COMMISSIONER HERIOT: Pete, you have to  
4 withdraw, too.

5 COMMISSIONER KIRSANOW: I'll withdraw.

6 CHAIRMAN CASTRO: Okay. Now that we're  
7 going to follow Robert's Rule of Order, we've got to  
8 make sure that that happens properly.

9 Okay. So, we have a presentation here of  
10 a draft timeline. We need a vote on this. We need a  
11 vote on this, so do we have a motion?

12 COMMISSIONER KIRSANOW: Mr. Chair, I  
13 would move to amend the timeline. Unfortunately,  
14 logistically, I'm not sure that I can provide a cogent  
15 revision to this for folks that are on the phone.

16 The purpose of the motion would be to  
17 truncate the -- well, the period in which the  
18 Commissioners would be able to file statements,  
19 rebuttals, surrebuttals in this particular timeline  
20 has compressed to a point that is different from what  
21 we've done in the past and what AIs require.

22 And, what I would propose is timeline that  
23 would give Commissioners the time that is set forth in  
24 both our past practice and our AIs.

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1                   And, as I've said before, that would  
2                   require me to present to you several different dates  
3                   that may be difficult to comprehend over the phone.

4                   So, I think what I may do is defer this  
5                   motion until December, but I'd like to at least explain  
6                   the basis for the motion to give you some idea as to  
7                   what the timelines would be.

8                   Most of the timelines would remain  
9                   virtually the same with the exception of the timelines  
10                  for submission of the report to the Staff Director for  
11                  consideration by the Commission.

12                  The report on -- the Commission's vote on  
13                  the report would be moved up approximately one week,  
14                  but others would be moved up approximately three weeks.  
15                  Again, to give Commissioners sufficient time  
16                  consistent with our AIs to file statements, rebuttals,  
17                  surrebuttals.

18                  But, the salient points are that the draft  
19                  submission to the Commissioners would be moved up from  
20                  the current May 31st to May 10th. Commissioner  
21                  comments on the initial draft would be moved up from  
22                  June 30th to the 10th. The Commission's vote on the  
23                  final report would be moved up to July 8th instead of  
24                  the 15th.

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1                   And, that would provide, if you look at the  
2 various timelines, sufficient time for Commissioners  
3 to submit statements, rebuttals and surrebuttals  
4 consistent with our past practice.

5                   So, I simply want to note this. I will --  
6 I'm not sure if there's a draft of this circulating  
7 among you right now. I doubt that there is, but I would  
8 propose this for our next meeting so that we have a  
9 sufficient amount of time consistent with what we've  
10 done in the past to submit reports or the statements,  
11 rebuttals and surrebuttals consistent with our AI.

12                   CHAIRMAN CASTRO: I'd like our Chief of  
13 OCRE to respond to this.

14                   MS. FRENCH-BELL: I can understand the  
15 reasons that the Commissioners would want to move the  
16 date that they receive --

17                   CHAIRMAN CASTRO: Could you move the mic  
18 a little?

19                   MS. FRENCH-BELL: Okay.

20                   I can understand why the Commissioners  
21 would want to receive the date that they receive the  
22 report forward. However, there are a couple of  
23 concerns.

24                   One, just because that is what we've done

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1 in the past, it doesn't take into reality our current  
2 situation. In the past, we may not have done the  
3 intense level of independent research that we are  
4 currently doing.

5 We may not have had town hall meetings and  
6 they may not have been incorporated into the timeline.  
7 So, I believe that's an important consideration.

8 Secondly, I was pleased to hear that we're  
9 adhering to the AI when it came to interrogatories.  
10 There's also an AI when it concerns the timeline and  
11 that the national office that's creating the report is  
12 supposed to develop the timeline.

13 And, the reason that that's done is because  
14 this office itself is aware of what's going on, what  
15 the circumstances are and whether or not they're able  
16 to actually complete that work in a timely manner.

17 Another reason is quality. One of the  
18 concerns that we've heard about our reports is that they  
19 want to be -- them to be of high quality. That's what  
20 we want, too. We're aware that we're not perfect, but  
21 we are moving towards perfection. And, in order to do  
22 that, we need the time in order to create board reports.

23 Another reason is that we need to ensure  
24 that we're able to incorporate all of the information

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1 and analysis from our town hall meetings. And, in  
2 order to that, we need time.

3 So, for all of those reasons, I would  
4 submit that, one, it might be possible that there's some  
5 sort of compromise that takes into consideration the  
6 Commissioners' concerns as well as the concerns of the  
7 staff.

8 And, assuming arguendo that there isn't  
9 that compromise available, then I would respectfully  
10 request that we be allowed to have move over to overtime  
11 and comp time that would be necessary to make this  
12 possible.

13 COMMISSIONER NARASAKI: Mr. Chair?

14 CHAIRMAN CASTRO: Commissioner Narasaki?

15 COMMISSIONER NARASAKI: So, I have a  
16 question because we also are going to be talking about  
17 what the actual plan is for the statutory report and,  
18 unlike prior reports, it does incorporate some  
19 subcommittee subhearings in addition to the main  
20 hearing that we typically do.

21 And so, you know, my concern is if we cut  
22 the time then the tradeoff might need to be it's either  
23 overtime, which we don't necessarily have funding for,  
24 or we may have to cut back on the amount of research

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1 that we are doing, and this is research that the  
2 Commissioners have asked for.

3 So, I'm just laying that out there. The  
4 Director is nodding, you might, for the record want to  
5 say something out loud.

6 But, my thing is I think Commissioners need  
7 to think about that tradeoff in trying to decide where  
8 we need to land on this issue about timeline.

9 MS. FRENCH-BELL: Thank you.

10 CHAIRMAN CASTRO: Madam Vice Chair?

11 VICE CHAIR TIMMONS-GOODSON: It's my  
12 understanding that Commissioner Kirsanow is inclined  
13 to defer the motion until December so as at least to  
14 have his proposed timeline in writing so that those of  
15 us that are visual and need to see it will have that.

16 CHAIRMAN CASTRO: But we do, he just  
17 handed it out.

18 VICE CHAIR TIMMONS-GOODSON: I meant now.

19 COMMISSIONER KIRSANOW: Yes, Mr. Chair,  
20 it's --

21 COMMISSIONER KLADNEY: I haven't seen it.

22 VICE CHAIR TIMMONS-GOODSON: I don't  
23 think that --

24 CHAIRMAN CASTRO: This is not his?

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1 Clarissa, weren't you handing this out? This is it.

2 VICE CHAIR TIMMONS-GOODSON: But, do the  
3 Commissioners on the phone have it?

4 CHAIRMAN CASTRO: Oh, I don't know.

5 VICE CHAIR TIMMONS-GOODSON: So,  
6 Commissioner Kladney theoretically you have it in your  
7 email.

8 COMMISSIONER KLADNEY: Are you still -- is  
9 Commissioner Kirsanow still included to defer his  
10 motion?

11 COMMISSIONER KIRSANOW: No, if everyone  
12 has it in front of them, what I would propose is that  
13 we consider this after a similar period of time, a few  
14 minutes, whatever Commissioners deem necessary to  
15 review it. It's not complicated; however, it's pretty  
16 clear as to what the dates that are being proposed.

17 And, I move on this now because given the  
18 timelines that we're talking about related to the  
19 staff's consideration and revision of the report, I  
20 think we're all together on this as soon as possible  
21 and I think we can do that today.

22 CHAIRMAN CASTRO: Okay, the longer we wait  
23 to do this, the further behind we get.

24 COMMISSIONER KIRSANOW: And, again, if

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1 you simply take a look at it, I apologize for  
2 interrupting, if you take a look at the timeline that  
3 is self-explanatory, we're not making draconian  
4 changes to this.

5 I think that everything that Angela said  
6 is well considered. We've taken this into  
7 consideration. We understand the exigencies involved  
8 in producing this report. We nonetheless maintain  
9 that, or I nonetheless maintain that it is imperative  
10 that we preserve the timelines for Commissioners to  
11 comment upon, file statements, rebuttals and  
12 surrebuttals consistent with what we've done in the  
13 past.

14 CHAIRMAN CASTRO: Well, this is the  
15 Chairman.

16 While I agree with you, your proposals are  
17 not draconian, that doesn't mean that they're  
18 necessarily reasonable in light of the tight timelines  
19 that we're on, particularly given the rightfully  
20 aggressive effort we're undertaking to address this  
21 issue by way of not only a briefing but town halls and  
22 the additional research to make this a really impactful  
23 hearing and impactful report with information of the  
24 first instance, which is what we've all been asking for.

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1                   You know, we're not -- we're trying to not  
2                   just parrot what other people are telling us. And,  
3                   while 30 days seems like a little bit to us, on that  
4                   the staff that we've already all agreed is overtaxed.  
5                   And, in fact, took an action earlier today to take two  
6                   reports off their plate because they're over stacked.

7                   It seems to me that this is not the  
8                   appropriate way to handle it. I understand that this  
9                   current draft that we have from the Office of Civil  
10                  Rights Evaluation does make adjustments so that  
11                  Commissioners do have the opportunity to submit their  
12                  statements and rebuttals, the only question is the  
13                  issue of surrebuttal which I understand, should that  
14                  be exercised, could take us beyond our statutory  
15                  deadline.

16                  However, we -- it's virtually impossible,  
17                  at this point, we've seen, for surrebuttals to even  
18                  occur because, one, it's hard for us to tell right now  
19                  whether they'll happen, but just in the last report we  
20                  had on immigration, one which I fully would have  
21                  expected to be controversial enough to merit  
22                  surrebuttals, that did not occur. And, even if it did,  
23                  there would be certain triggers that needed to occur  
24                  where, I believe, three Commissioners would need to

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1 approve surrebuttals. I doubt that would happen.

2 So, I think that this timeline presented  
3 by OCRE accommodates the realistic needs of rebuttals  
4 and statements and also gives them a realistic  
5 opportunity to present to us the most high quality work  
6 product in the first instance.

7 Commissioner Narasaki?

8 COMMISSIONER HERIOT: Mr. Chairman?

9 CHAIRMAN CASTRO: Yes, Commissioner  
10 Heriot and then Commissioner Narasaki.

11 COMMISSIONER HERIOT: Okay. Everyone  
12 agrees that we would like this report to be of high  
13 quality. The problem is it's not just the Commissioner  
14 statements that are at stake here, it's the period under  
15 which Commissioners are able to form what goes into the  
16 body of the staff written report.

17 I have counseled modesty in the past. I  
18 will continue to counsel that here. If it's not  
19 possible to get a draft of the report done by the time  
20 that Commissioner Kirsanow is suggesting, it's because  
21 the outline is insufficiently modest.

22 For example, the outline brings in  
23 Hurricane Katrina and fracking. These issues should  
24 not be in the report at all.

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1                   Mr. Chairman, you have said that you would  
2                   like that report to have an impact. It will not have  
3                   an impact except an embarrassing one unless we get the  
4                   draft early enough to make whatever modifications are  
5                   necessary.

6                   I strongly support Commissioner  
7                   Kirsanow's motion which, if no one else has seconded  
8                   it, I will certainly second.

9                   I don't see this as really something that  
10                  we have a lot of a choice on. Last year's report I think  
11                  was significantly embarrassing. I don't want this  
12                  report to be as well.

13                  CHAIRMAN CASTRO: I think the only thing  
14                  embarrassing was the way that the dissenters handled  
15                  their position on this in the public arena.

16                  But, in any event, Commissioner Narasaki  
17                  and then I want to have the OCRE opine.

18                  COMMISSIONER NARASAKI: So, I don't feel  
19                  that Commissioner Kirsanow's request is unreasonable,  
20                  but I do feel that having gotten it just five minutes  
21                  ago and the fact that it's very clear from the  
22                  discussion that it could impact what's actually in the  
23                  report, how much we're going to do in the report.

24                  But, I feel we should wait to make a

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1 decision so we have a chance to hear from OCRE exactly,  
2 as Gail notes, exactly what might need to be cut out  
3 so that we completely understand the tradeoffs before  
4 we vote.

5 I understand that we are under a time  
6 crunch because work needs to move forward. So, we will  
7 not have the luxury of working to the December meeting.

8 I think this is something that maybe we  
9 could handle by notational vote. But, I'm hoping to  
10 give the staff at least some time to be able to tell  
11 us what the impact would be so that we're making a  
12 decision with the full knowledge of what the -- how that  
13 is going to impact the content of the report.

14 COMMISSIONER ACHTENBERG: Mr. Chairman?

15 CHAIRMAN CASTRO: I'm going to have the  
16 OCRE opine and then, is that you, Commissioner  
17 Achtenberg?

18 COMMISSIONER ACHTENBERG: Yes.

19 CHAIRMAN CASTRO: Yes, you'll speak after  
20 she does.

21 Go ahead.

22 MS. FRENCH-BELL: Thank you.

23 One of the comments that I wanted to  
24 address was that fracking and Hurricane Katrina would

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1 be central parts of the report. That is not true.  
2 There's just going to be a brief mention of those issues  
3 at the end of the report as subjects for other  
4 individuals or other Commissions or other federal  
5 agencies to explore. So, we will not be expounding in  
6 depth upon those issues.

7 The second thing, the notational vote may  
8 be a good idea because we would like to make a  
9 counterproposal that maybe takes into consideration  
10 both sides. And, I don't know that we can really talk  
11 about the town hall meeting until we've figured out what  
12 the timeline will be.

13 CHAIRMAN CASTRO: Okay. Commissioner  
14 Achtenberg?

15 COMMISSIONER ACHTENBERG: Well, I'm  
16 inclined to support Commissioner Kirsanow on this,  
17 particularly, although maybe what we really need is a  
18 compromise here. So, something we hadn't thought  
19 about a subsequent notational vote to give the  
20 principles an opportunity meet yet one more time.

21 I would only encourage that to happen  
22 quickly, like tomorrow or the next day so that we might  
23 resolve this well before, I don't know, you know, that  
24 we get into full holiday footing here.

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1                   CHAIRMAN CASTRO:   So, let me suggest this,  
2                   Commissioner Achtenberg, here's my concern about a  
3                   notational vote.   The last time we had one, one of the  
4                   Commissioner's blocked it.

5                   If we're going to move to a notational  
6                   vote, I think there should be an understanding among  
7                   Commissioners that we're not going to attempt to block  
8                   it.   You can vote against it, obviously, but don't  
9                   block it so that we have to push it to the December  
10                  meeting because this does need to be addressed.

11                  So, if there's a commitment among the  
12                  Commissioners not to block the notational vote, then  
13                  I'm willing to put it off.   Otherwise, I'm going to want  
14                  to vote today.

15                  So, do I have a commitment from the  
16                  Commissioners not to block a notational vote on a  
17                  potential compromise?

18                  COMMISSIONER NARASAKI:   You have my  
19                  commitment, Mr. Chair.

20                  COMMISSIONER ACHTENBERG:   Sure.

21                  COMMISSIONER KIRSANOW:   Kirsanow, yes.

22                  CHAIRMAN CASTRO:   Okay.   Commissioner  
23                  Heriot?

24                  COMMISSIONER HERIOT:   I'm happy to vote

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1 for it now or on a notational vote.

2 CHAIRMAN CASTRO: Okay.

3 COMMISSIONER HERIOT: I would prefer to  
4 vote on it now.

5 CHAIRMAN CASTRO: That's what I would --

6 COMMISSIONER KIRSANOW: That's what I --  
7 but you know, if we can do it by tomorrow or Friday,  
8 as Commissioner Achtenberg had proposed, I'm on board  
9 with that.

10 CHAIRMAN CASTRO: Well, there's a Notice  
11 period that we have to comply with and I think it's a  
12 four-day Notice is my recollection.

13 MR. MORALES: It can be waived.

14 CHAIRMAN CASTRO: Yes.

15 MR. MORALES: I can be waived.

16 CHAIRMAN CASTRO: Okay. Yes, it can be  
17 waived. So then we can do that.

18 COMMISSIONER HERIOT: Can we vote on this  
19 now?

20 CHAIRMAN CASTRO: No, because there's a  
21 compromise that -- that was out of order -- there was  
22 a proposed compromise that the head of OCRE wants to  
23 put forward. And so, I want to give her an opportunity  
24 to do that.

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1                   COMMISSIONER HERIOT: Well, can we vote on  
2 this now then we can then, you know, re-vote on it later  
3 if we want.

4                   CHAIRMAN CASTRO: Here, why don't we do  
5 this?

6                   COMMISSIONER HERIOT: It seems like, you  
7 know, a lot of time that's going to be spent --

8                   CHAIRMAN CASTRO: Okay, believe me, I  
9 know.

10                  COMMISSIONER HERIOT: -- you know, a lot  
11 of time will be spent instead of working on the report  
12 lobbying for more time. And, I would prefer to vote  
13 now and if there's a notational vote later, I'll vote  
14 on that, too.

15                  CHAIRMAN CASTRO: We will put it off to --

16                  COMMISSIONER HERIOT: And there is a  
17 motion pending.

18                  CHAIRMAN CASTRO: We're going to put it  
19 off to a notational vote that will happen quickly.

20                  COMMISSIONER KIRSANOW: My issue is still  
21 pending, though, Mr. Chair.

22                  COMMISSIONER HERIOT: Yes.

23                  CHAIRMAN CASTRO: Yes, we'll --

24                               (Simultaneous speaking.)

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1 CHAIRMAN CASTRO: -- table the motion.  
2 Motion to table your motion. Can we have a motion to  
3 table the motion, please?

4 COMMISSIONER NARASAKI: I move to table  
5 the motion.

6 CHAIRMAN CASTRO: Is there a second?

7 VICE CHAIR TIMMONS-GOODSON: I'll second.

8 CHAIRMAN CASTRO: Okay. We'll give an  
9 opportunity for the principles to discuss this and  
10 quickly put out a proposed compromise that meets the  
11 needs of both of OCRE as well as the Commissioners who  
12 do raise valid concerns about additional time. Okay?

13 COMMISSIONER HERIOT: No.

14 CHAIRMAN CASTRO: No? Okay, well, go  
15 ahead Ms. Vice Chair.

16 VICE CHAIR TIMMONS-GOODSON: Let me say,  
17 I like or could support Commissioner Kirsanow's  
18 proposal but for if we were considering this in a  
19 vacuum. But, as I look and understand that we have the  
20 statutory hearing in January, well, in March, we have  
21 another -- we have a briefing. And then, in May, we  
22 have a briefing.

23 The proposed timeline change that has been  
24 submitted by Commissioner Kirsanow would have the first

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1 draft, the initial draft to the Staff Director the 19th  
2 of April.

3 So, January, you have the hearing, another  
4 briefing on a totally different issue in March. April  
5 19th, you have the report, the draft has to be ready  
6 to be given to the Staff Director.

7 And then, in May, we have still another  
8 briefing.

9 Like I said, if we're looking for  
10 considering this motion or this change in a vacuum,  
11 there's certainly nothing wrong with it. We could do  
12 it, but given all of the other things, it does look like  
13 an awful lot.

14 And so, I hope that we can find a  
15 compromise.

16 CHAIRMAN CASTRO: And, that's what we're  
17 going to do so, Commissioner Heriot, look in your  
18 mailbox for a notational vote ballot.

19 COMMISSIONER HERIOT: We've got to vote on  
20 the motion to table.

21 CHAIRMAN CASTRO: All those in favor of  
22 the motion to table, say aye?

23 (Chorus of aye.)

24 CHAIRMAN CASTRO: Any opposed?

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1 COMMISSIONER KIRSANOW: Roll call vote,  
2 please?

3 COMMISSIONER HERIOT: No.

4 CHAIRMAN CASTRO: All right, I'll do a  
5 roll call vote.

6 Madam Vice Chair, how do you vote?

7 VICE CHAIR TIMMONS-GOODSON: Aye.

8 COMMISSIONER KLADNEY: Are we finished  
9 discussing this?

10 CHAIRMAN CASTRO: Yes.

11 COMMISSIONER KLADNEY: I mean I have a  
12 couple of things to say.

13 CHAIRMAN CASTRO: Okay, well go ahead  
14 then, Commissioner.

15 COMMISSIONER KLADNEY: I, too, am  
16 inclined for Commissioner Kirsanow. One of the things  
17 that seems to be rattling in the back of my head is for  
18 surrebuttal. I thought the Commission needed to vote  
19 on that to allow that to occur in AI.

20 The second thing is, as far as overtime or  
21 comp time is concerned, I believe we've just saved a  
22 bunch of money from suspending these other reports we  
23 were going to do.

24 The third item I would like to mention is,

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1 even though we have these other two briefings schedule  
2 for, as pointed out by the Vice Chair, for March and  
3 then May I believe it was, if we need to, I would assume  
4 we could copy them up or move them down the calendar  
5 another month or six weeks or something like that if  
6 that is what seems to be the problem.

7 It just seems to me that this can be done  
8 and there can be a compromise that's in the works to make  
9 it done, especially if we consider these three things.

10 I can't remember the AI, but I thought  
11 there was an AI where the Commission had to vote to allow  
12 surrebuttal.

13 COMMISSIONER HERIOT: No.

14 COMMISSIONER KLADNEY: Maybe someone can  
15 help me out.

16 COMMISSIONER HERIOT: It's like you have  
17 to have three members, I think, that are in favor of  
18 it.

19 COMMISSIONER KLADNEY: There we go,  
20 that's a vote. So, that's --

21 COMMISSIONER ACHTENBERG: Mr. Chairman?

22 CHAIRMAN CASTRO: So, yes, Commissioner  
23 Achtenberg?

24 COMMISSIONER HERIOT: Yes, I think three

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1 members have to invoke.

2 CHAIRMAN CASTRO: Can I have some water,  
3 please? Can I have some water please?

4 Mr. Achtenberg?

5 COMMISSIONER ACHTENBERG: I am notionally  
6 in favor of Commissioner Kirsanow's proposal.  
7 However, given the request by the OCRE to work with  
8 Commissioners to find a compromise, I would support the  
9 motion to table but with the caveat that Commissioner  
10 Heriot requests that the possibility of surrebuttal be  
11 preserved. I won't -- unless that's a part of the  
12 consideration, I won't support a motion to table.

13 CHAIRMAN CASTRO: Well, I think that's the  
14 whole point of trying to find some time to find a  
15 compromise. So, I mean we're not tabling it to kill  
16 it, we're tabling it to give these people time to  
17 discuss a thoughtful resolution that meets everybody's  
18 needs.

19 COMMISSIONER KLADNEY: Can we have a date  
20 for when this --

21 COMMISSIONER ACHTENBERG: I'm putting my  
22 colleagues on notice --

23 CHAIRMAN CASTRO: Yes?

24 COMMISSIONER ACHTENBERG: -- that I won't

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1 support ultimately anything that takes away from the  
2 Commissioners' potential right in this case.

3 CHAIRMAN CASTRO: And, Commissioner  
4 Kladney, I think it was said that we would issue a  
5 notational ballot by tomorrow. So, I don't know how  
6 much more specific a timeline you need than that.

7 COMMISSIONER KLADNEY: I must have missed  
8 that, Mr. Chairman.

9 CHAIRMAN CASTRO: You must have.

10 COMMISSIONER KLADNEY: It's hard on the  
11 phone. It's hard on the phone.

12 CHAIRMAN CASTRO: I know, I must have been  
13 on mute.

14 So, now I will take a roll call vote on the  
15 motion to table. The purpose of which is to give OCRE  
16 and Commissioner Kirsanow and those who may interested  
17 an opportunity to craft a compromise that works for  
18 everyone which will then be used --

19 COMMISSIONER HERIOT: Okay, I don't quite  
20 understand what's going on here.

21 CHAIRMAN CASTRO: Well, just pay  
22 attention.

23 Then we will then have that compromise --  
24 I'm not done -- we will then have that compromise

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1           circulated by way of notational vote by tomorrow.

2                       COMMISSIONER HERIOT:    I don't want that.

3                       CHAIRMAN CASTRO:    I know you don't, but  
4           that's what we're all -- we're going to vote on.

5                       COMMISSIONER HERIOT:    No, I don't  
6           understand. Hold on, hold on.

7                       CHAIRMAN CASTRO:    No, you hold on,  
8           Commissioner Heriot.

9                       COMMISSIONER HERIOT:    Hold on, hold.

10                      CHAIRMAN CASTRO:    No.

11                      COMMISSIONER HERIOT:    Hold on, hold on,  
12           hold. The notational vote that you are proposing is  
13           that we vote on the compromise. But, I don't want to  
14           vote on the compromise because that will be just another  
15           take it or leave from the staff.

16                      What we need is a vote that allows us to  
17           vote for peak timeline.

18                      CHAIRMAN CASTRO:    Well then, you vote no  
19           on the motion to table. That's your option.

20                      COMMISSIONER HERIOT:    That has to be part  
21           of the option.

22                      CHAIRMAN CASTRO:    Well, that's the  
23           options.

24                      So, now I'm going to carve the question on

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1 the motion to table.

2 COMMISSIONER HERIOT: Hold on, hold on,  
3 hold on, hold on. Whatever --

4 CHAIRMAN CASTRO: So, moving forward --  
5 Commissioner -- Madam Vice Chair, how do you vote on  
6 the motion to table?

7 VICE CHAIR TIMMONS-GOODSON: Aye.

8 CHAIRMAN CASTRO: Commissioner Narasaki,  
9 how do you vote on the motion to table?

10 COMMISSIONER NARASAKI: Aye.

11 CHAIRMAN CASTRO: Commissioner Kladney,  
12 how do you vote on the motion to table?

13 COMMISSIONER KLADNEY: I abstain.

14 CHAIRMAN CASTRO: Commissioner Kirsanow,  
15 how do you vote on the motion to table?

16 COMMISSIONER KIRSANOW: No.

17 CHAIRMAN CASTRO: Commissioner  
18 Achtenberg, how do you vote on the motion to table?

19 COMMISSIONER ACHTENBERG: Yes.

20 CHAIRMAN CASTRO: Commissioner Heriot,  
21 how do you vote on the motion to table?

22 COMMISSIONER HERIOT: No.

23 CHAIRMAN CASTRO: And, I vote yes. So, we  
24 have one, two, three, four yeses, one abstention and

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1 two nos. So, does that carry?

2 So, a majority of those voting voted in  
3 favor of tabling. It's four yeses, one abstention and  
4 two nos.

5 MS. HEPLER: We've got a quorum, we've got  
6 five and four out of seven is a quorum and four of them  
7 --

8 CHAIRMAN CASTRO: Okay, I just want to  
9 make sure because I know that we had questions about  
10 this in the past.

11 So, the motion to table passes then.

12 COMMISSIONER KIRSANOW: Mr. Chairman, I  
13 then move that a notational vote to be conducted  
14 tomorrow the Commission vote on the timeline that was  
15 just distributed to Commissioners.

16 COMMISSIONER HERIOT: Second.

17 CHAIRMAN CASTRO: We had agreed that there  
18 would be an opportunity for you to discuss with OCRE  
19 a potential compromise. So, I'm hearing that your  
20 motion is no?

21 COMMISSIONER KIRSANOW: If the notational  
22 vote fails, we can do that.

23 COMMISSIONER NARASAKI: Can I say  
24 something?

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1                   CHAIRMAN CASTRO:       Yes, Commissioner  
2                   Narasaki?

3                   COMMISSIONER NARASAKI:   So, Commissioner  
4                   Kirsanow, what we've been discussing is, is there an  
5                   opportunity to get to a compromise.  Obviously, if you  
6                   don't agree then there's not going to be a compromise  
7                   to vote on.  So then, we will be voting on your motion.

8                   So, what I would suggest, I think hopefully  
9                   this takes into account what Commissioner Heriot was  
10                  seeking, is that the notational vote will be on a  
11                  compromise, if a compromise is reached.  And, if not,  
12                  we will be voting on Commissioner Kirsanow's motion.

13                  COMMISSIONER KIRSANOW:   I'm okay with  
14                  that.

15                  CHAIRMAN CASTRO:   Yes.

16                  COMMISSIONER HERIOT:   Yes, I'm okay with  
17                  that, too.  That's what I was missing.

18                  CHAIRMAN CASTRO:   Okay.  So, I don't -- we  
19                  don't need a vote on that, that's -- we will proceed  
20                  under that set of circumstances.  Okay?

21                  All right, so I think we're done with that.  
22                  Anything else for you?

23                  MS. FRENCH-BELL:   I don't know if you --

24                  CHAIRMAN CASTRO:   I think we're far from

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1 done.

2 MS. FRENCH-BELL: I don't know if you want  
3 me to talk about the town hall meeting plan as it  
4 currently stands or --

5 CHAIRMAN CASTRO: Does it make a  
6 difference what that timeline is?

7 MS. FRENCH-BELL: I may need to go back  
8 with staff and discuss to kind of come to a resolution.  
9 So, but I can present it as it is right now.

10 CHAIRMAN CASTRO: Why don't you do that?

11 MS. FRENCH-BELL: Okay. So, basically,  
12 what we're proposing is, of course, the primary  
13 briefing would take place in D.C. in January 2016.

14 We're also proposing a town hall forum  
15 meeting in Perry County, Alabama in late February or  
16 early March. And, the reason that we wanted it on that  
17 date was to make sure that it would not interfere with  
18 the other briefings. And, to the extent possible, to  
19 try to avoid inclement weather.

20 The reason that we chose Alabama, and we  
21 definitely wanted you input on this as well, because  
22 it's a central issue that's in the concept paper. It's  
23 the one area that has been a Title XI case that's been  
24 -- or a complaint that's been accepted and it also bring

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1 together a lot of issues on disproportionate health  
2 impacts in communities of color.

3 The second option that we have is a  
4 Commission Subcommittee briefing and we have options  
5 for three locations, Chicago, Illinois or Joliet area,  
6 the other North Carolina, the Moapa River Reservation  
7 in Nevada. And that would be a choice of the  
8 Commissioners and we would schedule according to which  
9 ever location that you selected.

10 And then, the last action would be a  
11 maximum of two set advisory committee SAC forms.

12 CHAIRMAN CASTRO: Okay, you don't need to  
13 vote on that today?

14 MS. FRENCH-BELL: No, it would have been  
15 helpful, but we kind of need to sort the other issues  
16 out as well.

17 CHAIRMAN CASTRO: All right. Thank you.  
18 Any questions?

19 COMMISSIONER HERIOT: I'm a little  
20 confused here, Mr. Chairman. Are we talking about  
21 having a Chicago and Alabama town hall plus these  
22 meetings in Nevada and North Carolina?

23 MS. FRENCH-BELL: No, it would be in one  
24 of those three options. We do not have the time, staff

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1 or resources for three, unfortunately. We'd love to  
2 do it, but we cannot.

3 COMMISSIONER HERIOT: Even that seems  
4 like a lot. I thought we were just going to do Alabama  
5 and Chicago.

6 MS. FRENCH-BELL: Chicago may be one of  
7 those three options for the second option for a  
8 subcommittee, there's an option for Chicago or even  
9 North Carolina or Nevada, so it would one of those  
10 three. So, it still could potentially be in Chicago,  
11 Illinois.

12 COMMISSIONER HERIOT: Oh, I misunderstood  
13 this. I thought that originally our plan was to have  
14 subcommittees do Perry County and Chicago and that was  
15 it.

16 CHAIRMAN CASTRO: So, there's three  
17 different things here, right? There's the hearing,  
18 there's a town hall and then there's these  
19 subcommittee, what, fact finding kind of?

20 MS. FRENCH-BELL: Right.

21 CHAIRMAN CASTRO: So, it's really three  
22 different levels is the way I understand it. So, it's  
23 not that there's going to be three different town halls,  
24 there's going to be one town hall, and then these sort

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1 of lower level subcommittee fact finding, maybe  
2 something like what we did to the detention centers?

3 MS. FRENCH-BELL: Right.

4 CHAIRMAN CASTRO: Is that -- okay.

5 MS. FRENCH-BELL: Exactly.

6 COMMISSIONER HERIOT: I get back to my  
7 modesty point. You do too much and you're just going  
8 to foul up.

9 CHAIRMAN CASTRO: Okay. Well, point well  
10 taken. We'll figure it out when we vote on it.

11 COMMISSIONER NARASAKI: Mr. Chair?

12 CHAIRMAN CASTRO: Yes, Commissioner?

13 COMMISSIONER NARASAKI: So, I have a  
14 question about the SACs because my understanding is  
15 that we, as a Commission, cannot tell State Advisory  
16 Committees what to do. But, so I understand is an  
17 invitation, but I'm just wondering at the timing,  
18 right, because they would need to move quickly for them  
19 to be able to do something that could be incorporated  
20 in the report.

21 So, I'm just wondering how realistic that  
22 is?

23 MS. FRENCH-BELL: We're not entirely  
24 certain that that will take place. We just wanted to

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1 ensure that we are including the SACs and giving them  
2 the opportunity to participate if they would like to.

3 We worked with Mauro and Maureen to develop  
4 a letter to send out to the SACS asking them if they  
5 wanted to help. And it doesn't just have to be holding  
6 a form, it could also be research that they may have  
7 found in other arenas that they would like to send to  
8 us for inclusion in the report.

9 COMMISSIONER NARASAKI: So, would there  
10 be sufficient regional staff capacity to support this?  
11 If a SAC volunteered to do that, would they have support  
12 to do that?

13 MS. FRENCH-BELL: We would have to work  
14 with the ASCD and we would actually probably let them  
15 respond to that. They are aware that that's in the  
16 plan. We did discuss it with them beforehand, but  
17 perhaps it would be best to have ASCD comment on whether  
18 there will be sufficient support for a SAC meeting.

19 MR. MORALES: In addition, let me -- I'm  
20 sorry, this is Staff Director Morales.

21 In addition, we've been in contact with,  
22 you know, the Director of the State Advisory Committee  
23 Regional Office, David Mussatt. And he's reaching out  
24 as well to the SACs to see what their level of interest

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1 is.

2 And, there has been some level of interest  
3 with some SACs. Whether or not you're completely  
4 correct, Commissioner Narasaki, whether or not there's  
5 the time and the ability to do it, obviously, that  
6 remains to be seen.

7 But, we're hopeful that we can and that,  
8 you know, because the SACS are out there, obviously,  
9 in their states, they're more, you know, they're better  
10 positioned to be able to pull something together if they  
11 can't.

12 So, it's an option we want to explore and  
13 will continue to explore and we're hopeful that that  
14 could occur. But, it's, you know, of course, again,  
15 as you pointed out, it's the timing and certainly with,  
16 you know, a shortened time, that may actually not be  
17 a possibility and we may have to let it go.

18 COMMISSIONER NARASAKI: Right. No, I  
19 love the idea, it's just about making sure that it could  
20 be executed.

21 COMMISSIONER KLADNEY: Mr. Chairman?

22 CHAIRMAN CASTRO: Yes? Go ahead.

23 COMMISSIONER KLADNEY: I was wondering if  
24 OCRE has looked at this and all these hearings with the

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1 SACs and things like that? How much does that cost and  
2 how many hours of staff time does it take to put all  
3 that together? Well, that they've estimated in their  
4 budget?

5 MS. FRENCH-BELL: We are working with ASCD  
6 and the Office of Management and also John with budget.  
7 We can put a proposal together to you and submit it for  
8 the next meeting.

9 COMMISSIONER KLADNEY: So, you don't have  
10 any idea how many hours or dollars it will take at this  
11 point even though you proposed it?

12 MS. FRENCH-BELL: We have a rough  
13 estimate, but we don't have a complete estimate and I  
14 would rather wait until we had a complete estimate to  
15 provide it.

16 COMMISSIONER KLADNEY: Well, what do you  
17 think the rough estimate is?

18 MS. FRENCH-BELL: As I said, I think it  
19 would be better just to give an accurate estimate. I  
20 don't want to misspeak and I want to make sure that we've  
21 considered all the factors, all the individuals that  
22 may attend.

23 For instance, if we're talking about  
24 Alabama, it would make a difference between how many

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1 Commissioners decided to attend what the cost would be.  
2 So, I would hesitate to give a figure that didn't fully  
3 take into account the number of people who may be  
4 attending.

5 COMMISSIONER KLADNEY: Okay, so we don't  
6 have any idea at this time, we'll have one next month?

7 MS. FRENCH-BELL: I would rather wait  
8 until we have the most accurate estimate to provide one  
9 and I will do so next month, correct. Thank you.

10 COMMISSIONER NARASAKI: Can I ask a  
11 question?

12 CHAIRMAN CASTRO: Yes, Commissioner  
13 Narasaki?

14 COMMISSIONER NARASAKI: So, I think maybe  
15 what might help in terms of trying to do the estimates  
16 is to figure out if we can among the Commissioners how  
17 many actually intend to participate and have a more  
18 formal subcommittee than just necessarily who wants to  
19 show up. So, that's just my suggestion. I haven't  
20 discussed with the other Commissioners, so I don't know  
21 how they feel about that.

22 MS. FRENCH-BELL: That would be very  
23 helpful. Thank you.

24 CHAIRMAN CASTRO: Okay, any other

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1 questions? If not, thank you. You're off the hot seat  
2 now.

3 Now, we'll move on to the next items on the  
4 Agenda. You should have --

5 COMMISSIONER HERIOT: Can I just make one  
6 comment, though, about seeing the list of witnesses  
7 that are supposed to come to our briefing in January  
8 on this, it is way, way, way long and it is not clear  
9 to me that we want to have anywhere near that number  
10 of witnesses.

11 CHAIRMAN CASTRO: Go ahead, Angela.

12 MS. FRENCH-BELL: That was our initial  
13 list of witnesses. The actual list will not be that  
14 long.

15 CHAIRMAN CASTRO: Okay.

16 MS. FRENCH-BELL: And, we will --

17 COMMISSIONER HERIOT: So, are those  
18 people that have had invitations or are they just people  
19 that you thought about?

20 MS. FRENCH-BELL: They're people who have  
21 had invitations. They will not all come.

22 COMMISSIONER HERIOT: How many have  
23 agreed to actually participate?

24 MS. FRENCH-BELL: I would say about 80

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1 percent.

2 COMMISSIONER HERIOT: And more may be  
3 agreeing to participate in the future or have the others  
4 said no?

5 MS. FRENCH-BELL: I'm a little confused by  
6 your question.

7 COMMISSIONER HERIOT: Are the other  
8 invitation still pending, the 20 percent?

9 MS. FRENCH-BELL: Some of them have said  
10 no and some of them are still pending.

11 COMMISSIONER HERIOT: So, we've got the  
12 list of who said yes and who said no and who's still  
13 pending?

14 MS. FRENCH-BELL: Yes, we will send that  
15 around next week. Thank you.

16 **II. PROGRAM PLANNING**

17 **DISCUSSION AND VOTE ON APPROVAL OF**

18 **LETTER TO SOLICITOR GENERAL REGARDING**

19 **FISHER V. UNIVERSITY OF TEXAS**

20 CHAIRMAN CASTRO: Okay. Next, we have a  
21 discussion and vote on the approval of a letter to the  
22 Solicitor General regarding the Fisher v. University  
23 of Texas case.

24 As you recall, two of our colleagues have

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1 submitted an amicus brief. Some of us believe that it  
2 improperly confuses their role as Commissioners and it  
3 makes it appear that they're statements in support or  
4 I should say against the University of Texas admission  
5 policy is the position of the Commission, which it is  
6 not.

7 We have drafted a letter to the Solicitor  
8 General asking that office to ask the Clerk of the  
9 Supreme Court to change the caption on their docket so  
10 that it is clear that it is not Commission or couldn't  
11 imply that it is Commission related amicus brief.

12 We wanted to vote on this letter via  
13 notational vote a couple weeks ago. Commissioner  
14 Kirsanow objected, therefore, the letter is here.

15 You have all seen the letter previously as  
16 well as in your packet. So, any motion so that we can  
17 have a discussion?

18 COMMISSIONER ACHTENBERG: So moved.

19 CHAIRMAN CASTRO: Okay. Commissioner  
20 Achtenberg moved. Madam Vice Chair, you second?

21 VICE CHAIR TIMMONS-GOODSON: I second.

22 CHAIRMAN CASTRO: Any discussion?

23 COMMISSIONER KIRSANOW: Yes, Mr.  
24 Chairman, Kirsanow here.

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1 CHAIRMAN CASTRO: Go ahead, Commissioner.

2 COMMISSIONER KIRSANOW: I'll simply note  
3 that if anyone is confused by that brief, then they have  
4 no business being involved in the Supreme Court.

5 The brief is clear in so many different  
6 respects that it was filed on our individual basis and  
7 as counsel has markeded, my firm name is on the brief.  
8 It doesn't say anything about the Commission on it.

9 This amicus brief that was filed all make  
10 it abundantly clear on whom's behalf such Commission  
11 brief is filed, whether it's Members of Congress, in  
12 this particular case, you have a number of interest  
13 groups that have filed, universities that have filed,  
14 think tanks that have filed, make it abundantly clear  
15 on whom's behalf it's filed.

16 In our brief, in several different  
17 locations, Mr. Harriet and I make it completely clear  
18 this is being done on our individual capacities.

19 So, my point to you is that this letter is  
20 overkill and I think it would be an embarrassment to  
21 the Clerk of the Court, the Solicitor General, the  
22 various Clerks in the Supreme Court, the Supreme Court  
23 Justices, if they were to concur that somehow they were  
24 confused by my brief.

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1                   CHAIRMAN CASTRO: The public docket entry  
2                   -- Commissioner Kladney, let me speak and then I'll let  
3                   you.

4                   The public docket entry says brief, amici  
5                   curiae of Gail Heriot and Peter Kirsanow, Members of  
6                   the United States Commission on Civil Rights. If that  
7                   does not imply your titles, then I don't know what does.

8                   And, if anything is an embarrassment, it  
9                   is two Commissioners of the United States Commission  
10                  on Civil Rights standing up against Affirmative Action.

11                  So, we want to that trend to change and in  
12                  your substantive amicus brief, you can say what you  
13                  want. We want to clear the public record so that it  
14                  is clear that those titles do not appear there.

15                  Commissioner Kladney?

16                  COMMISSIONER KLADNEY: That's really all  
17                  I had to say. I mean the brief speaks for itself, but  
18                  it's just the docket entry that seems to be incorrect  
19                  and I'm sure that Commissioner Heriot and Commissioner  
20                  Kirsanow would not want somebody to come by or in the  
21                  press and read that and say United States Commission  
22                  on Civil Rights, that would be a misreading and I'm sure  
23                  nobody wants that to happen.

24                  COMMISSIONER KIRSANOW: I would say that

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1 having mitigated cases in the U.S. Circuits and Supreme  
2 Court and elsewhere, that almost those who look at the  
3 docket are the individuals I just mentioned. There may  
4 be an extreme member of the public that may have had  
5 too many comments to say, but who's going to look at  
6 the Supreme Court docket? No one else looks at that  
7 thing, no one in the world is going to be confused by  
8 this thing.

9 COMMISSIONER KLADNEY: Then they're  
10 opened up for a challenge.

11 COMMISSIONER KIRSANOW: If they simply  
12 look at the thing, I'm saying it's superfluous.

13 CHAIRMAN CASTRO: Commissioner Narasaki?

14 COMMISSIONER KIRSANOW: But, why -- you  
15 don't mind if nobody's looking at it.

16 CHAIRMAN CASTRO: Order, order.  
17 Commissioner Narasaki? Commissioner Narasaki?

18 COMMISSIONER NARASAKI: So, I would  
19 actually like to note two things. The reason that it's  
20 improperly put into the docket is because the caption,  
21 unfortunately, erroneously included the titles. If  
22 you had left the caption at the two individual names,  
23 we would not have this problem.

24 So, I just want to note that it came from

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1 the fact that the caption, unfortunately, was erroneous  
2 even though, internally, it makes it clear that you are  
3 not filing on behalf of the Commission.

4 The second thing is that I actually follow  
5 this issue very closely and, in fact, every time this  
6 case has been argued, the New York Time, the USA Today  
7 and other broadly circulated newspapers have actually  
8 listed all of the amici to show that the incredible  
9 interests and diversity of people weighing in.

10 So, while, Pete, you're right that people  
11 will not be necessarily running to the docket, it  
12 actually does get written about and that's what we're  
13 concerned about.

14 CHAIRMAN CASTRO: Madam Vice Chair?

15 VICE CHAIR TIMMONS-GOODSON: I was just  
16 wondering if in light of Commissioner Kirsanow's  
17 statement if he would consider simply removing that  
18 language, Members of the United States Commission on  
19 Civil Rights and that would, you know, since, as you  
20 say, no one looks at it, that would just clear it up  
21 and we -- I was just wondering if you would consider  
22 doing that?

23 COMMISSIONER KIRSANOW: I'll talk with  
24 Commissioner Heriot about it. I'm not inclined to do

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1 so because I don't think there's been any risk of  
2 confusion. Again, I tend to think that the folks who  
3 are interested in this case are pretty smart. And, if  
4 they're interested in it, they're simply not going to  
5 look at even a public page and say, well, you know, this  
6 is the Commission's position.

7 In addition to that --

8 COMMISSIONER ACHTENBERG: Mr. Chairman?

9 CHAIRMAN CASTRO: Yes, Commissioner?

10 COMMISSIONER KIRSANOW: -- there's a  
11 very small hall closet of people interested in this  
12 issue on in terms of what my side of the issue says.  
13 They will not look at this, they know who Gail Heriot  
14 and Peter Kirsanow are. They have absolutely no doubt  
15 what our position is.

16 CHAIRMAN CASTRO: Commissioner  
17 Achtenberg?

18 COMMISSIONER HERIOT: Mr. Chairman?

19 CHAIRMAN CASTRO: Commissioner  
20 Achtenberg first and then Commissioner Heriot.

21 COMMISSIONER ACHTENBERG: Mr. Chairman,  
22 my concern is that there are ethics implications for  
23 identifying oneself either primarily or exclusively as  
24 a Commissioner of the United States Commission on Civil

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1 Rights.

2 We have been admonished on many occasions  
3 that we're only entitled to use the moniker in a series  
4 of attributes and not either as the exclusive or the  
5 primary. And, that's the nature of my concern here.

6 And, I think if that is indeed the ethical  
7 standard, then this needs to be stricken and, it's my  
8 recollection that, internal to the brief itself, there  
9 may be -- need to be edits to the ways in which the  
10 Commissioners identify themselves.

11 So, I think is an ethical issue as well as  
12 an issue of potential misunderstanding.

13 COMMISSIONER KIRSANOW: Mr. Chair, if  
14 you'd please let me respond to that --

15 CHAIRMAN CASTRO: Commissioner Heriot  
16 wanted to speak.

17 COMMISSIONER KIRSANOW: If the very cover  
18 misstates who we are, it is not just the Commissioners,  
19 we state that Professor Gail Heriot is at the University  
20 San Diego School of Law, I'm at Benesch, Friedlander,  
21 Coplan & Aronoff. We spend two pages pursuant to  
22 Supreme Court rule identifying our interest and who we  
23 are.

24 It is said quite clearly that we are

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1 part-time appointees of the Commission on Civil Rights.  
2 We are filing this brief and amici in our individual  
3 capacity as private citizens.

4 Again, I tend to give credit to people in  
5 our industry, in our business, that they can read and  
6 that they can understand what this means and they're  
7 not going to be confused under any circumstances about  
8 what this is, particularly because everybody who's  
9 interested in this issue knows the Commission consists  
10 of eight people and that Gail Heriot and Peter Kirsanow  
11 are only that Commission.

12 CHAIRMAN CASTRO: Commissioner Heriot?  
13 And then we're going to call this for a vote.

14 COMMISSIONER HERIOT: Yes, the only thing  
15 I can add is that, you know, briefs are routinely filed  
16 by Members of Congress and they're identified as such.  
17 Nobody in their wildest imagination thinks they're  
18 speaking for Congress.

19 Our brief, if anything, was much more  
20 adamant about the fact that we were filing in our  
21 private capacities. We do not primarily identify as  
22 Commissioners. To the contrary, we say this is being  
23 done in our private capacity.

24 I'm happy to call the question.

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1 CHAIRMAN CASTRO: Okay. We're going to  
2 call the question then.

3 Madam Vice Chair, how do you vote?

4 VICE CHAIR TIMMONS-GOODSON: Yes.

5 CHAIRMAN CASTRO: Yes?

6 Commissioner Narasaki, how do you vote?

7 COMMISSIONER NARASAKI: Because the  
8 caption on the brief only refers to being Members of  
9 the Commission, I vote yes.

10 CHAIRMAN CASTRO: Commissioner Kladney,  
11 how do you vote?

12 COMMISSIONER KLADNEY: Yes.

13 CHAIRMAN CASTRO: Commissioner  
14 Achtenberg, how do you vote?

15 COMMISSIONER ACHTENBERG: I concur with  
16 Commissioner Narasaki precisely for that reason, I vote  
17 yes.

18 CHAIRMAN CASTRO: Commissioner Kirsanow,  
19 how do you vote?

20 COMMISSIONER KIRSANOW: No.

21 CHAIRMAN CASTRO: Commissioner Heriot,  
22 how do you vote?

23 COMMISSIONER HERIOT: I vote no.

24 CHAIRMAN CASTRO: And I vote yes.

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1                   The motion passes with one, two, three,  
2                   four, five yeases and two nos.

3   **II. PROGRAM PLANNING**  
4   **DISCUSSION AND VOTE ON APPROVAL OF**  
5   **PUBLIC STATEMENT REGARDING**  
6   **FISHER V. UNIVERSITY OF TEXAS**

7                   CHAIRMAN CASTRO: Similar to this issue,  
8                   we circulated I believe this morning, Sheryl circulated  
9                   a statement that we want to issue on this matter to the  
10                  public. Hopefully everyone received that.

11                  I don't know if you want me to read this  
12                  and then -- or, you know, let's do a motion and then  
13                  a second and then we can discussion.

14                  VICE CHAIR TIMMONS-GOODSON: Mr. Chair, I  
15                  move that the Commission issue the statement to which  
16                  you refer regarding the Supreme Court deciding soon  
17                  Fisher v. University of Texas at Austin.

18                  CHAIRMAN CASTRO: Is there a second?

19                  COMMISSIONER NARASAKI: I'll second.

20                  COMMISSIONER ACHTENBERG: I'll second.

21                  CHAIRMAN CASTRO: Do folks want me to read  
22                  this or has everyone had a chance to take a look at this?

23                  COMMISSIONER KLADNEY: Can I call for the  
24                  question?

1 CHAIRMAN CASTRO: Any discussion?  
2 Okay, you can call for the question,  
3 Commissioner.  
4 Madam Vice Chair, how do you vote?  
5 VICE CHAIR TIMMONS-GOODSON: Yes.  
6 CHAIRMAN CASTRO: Commissioner Narasaki,  
7 how do you vote?  
8 COMMISSIONER NARASAKI: Yes.  
9 CHAIRMAN CASTRO: Commissioner Kladney,  
10 how do you vote?  
11 COMMISSIONER KLADNEY: Yes.  
12 CHAIRMAN CASTRO: Commissioner  
13 Achtenberg, how do you vote?  
14 COMMISSIONER ACHTENBERG: Yes.  
15 CHAIRMAN CASTRO: Commissioner Kirsanow,  
16 how do you vote?  
17 COMMISSIONER KIRSANOW: No.  
18 CHAIRMAN CASTRO: Commissioner Heriot,  
19 how do you vote?  
20 COMMISSIONER HERIOT: No.  
21 CHAIRMAN CASTRO: And I vote yes.  
22 The motion passes with five yeses and two  
23 nos. So, this will be the public statement of the  
24 Commission. We'll have our press office issue it as

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1 well today, if possible. If not, tomorrow.

2 **II. PROGRAM PLANNING**

3 **DISCUSSION ABOUT DECEMBER 11TH EVENT AT**

4 **THE LINCOLN COTTAGE CEREMONY**

5 **COMMEMORATING THE PASSAGE OF**

6 **THE 13TH AMENDMENT**

7 CHAIRMAN CASTRO: Okay, now we're moving  
8 on to a discussion of our December 11th event at the  
9 Lincoln Cottage commemorating the passage of the 13th  
10 Amendment.

11 Mr. Staff Director?

12 MR. MORALES: Thank you, Mr. Chairman.

13 I'd like to just update the Commissioners  
14 on the progress and where we are.

15 Barbara de La Viez is not here with us but  
16 she's been spearheading a lot of this effort. We've  
17 been working with numerous of your staff assistants  
18 regarding, but I, nevertheless, still wanted to just  
19 call your attention to it now that we're getting pretty  
20 close it.

21 The date of the event, of course, I want  
22 to remind you, is December 11th. It'll be from 10:00  
23 a.m. to 12:00 a.m. It'll be at the Lincoln Cottage in  
24 Northeast Washington, D.C. It'll be in the room where

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1 President Lincoln drafted and wrote the draft of the  
2 Emancipation Proclamation.

3 And, of course, the celebration or the  
4 ceremony that we're having that day will be in  
5 commemoration of the passage of the 13th Amendment.

6 The room can handle up to 75 people maximum  
7 and we've gone through and looked at the number of  
8 invitations for Commissioners. We have six  
9 invitations per Commissioner. That invitation will  
10 include their -- does not include their special  
11 assistants, so if they want their special assistant to  
12 attend, then they need to allot one of that invitation  
13 to their special assistant.

14 We're in the process of drafting an Evite  
15 and we're actually sharing it today with the Chair to  
16 get his approval on it that we'll -- what we'd like to  
17 do is by the end of next week or at some time, we'll  
18 give you a date in the next week or less, probably in  
19 the next week, when we would like your -- the names and  
20 email addresses of the six individuals you would like  
21 to invite so that we can send that email -- I'm sorry,  
22 that Evite to them.

23 And we could have -- it's going to be to  
24 Barbara to RSVP so that we have a solid number, an

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1 ongoing number as to the number of people that could  
2 attend. Because, again, it is limited in terms of the  
3 size of the room.

4 Staff, we're also trying to allot the  
5 opportunity for staff to attend. There's an overflow  
6 room if need be, but, you know, perhaps that may not  
7 occur. Not all the invitations are used up.

8 The program that we've created is, and I'll  
9 just read it to you. You'll get a draft of all this  
10 or you'll get this in the next days here.

11 But, the way we have the program set up  
12 right now is that at 10:00 a.m., the event will start.  
13 The Chair will be the Master of Ceremonies. There'll  
14 be five minutes of welcome remarks by the Director of  
15 Lincoln Cottage, five minutes of remarks by the Chair.

16 Commissioner Heriot has asked for an  
17 opportunity to make comments, so we've allotted five  
18 minutes of time for her at the beginning there.

19 We'll have approximately 15 minutes of  
20 singing by either a choir or singers, we are still  
21 working on that. We haven't been able to nail down a  
22 quartet or a singer and we're still working on that.

23 We have a panel, so that should end those  
24 two segments from -- it should go from 10:00 a.m., 10:15

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1 and then should end at 10:30, that the end, you know,  
2 the singing.

3 And then we'll have a panel of scholars  
4 that will be moderated by the Chair. And, I'll just,  
5 very briefly, the three scholars we have, we're very  
6 excited about them.

7 One is a gentleman named Christian Samito.  
8 He holds his law degree from Harvard Law. He's a --  
9 and a Doctorate in History from Boston College. He's  
10 the author of Lincoln and the 13th Amendment which was  
11 released this year. It's, I believe, on the best  
12 seller's list. He's been on numerous television shows  
13 to discuss the book and the 13th Amendment.

14 He's an editor of a legal history  
15 documentary and two Civil War -- he owns two Civil War  
16 letter collections. He teaches legal and  
17 Constitutional history at BU, Boston University School  
18 of Law and practices law in Boston.

19 And, I only mention his name to all the  
20 individuals we are reaching out to become a part of  
21 this panel, they were all very excited about his, you  
22 know, participation because he's viewed as, right now,  
23 as the preeminent scholar and figure on the 13th  
24 Amendment and as well as the Lincoln Cottage being very

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1 excited about our being able to have secured him.

2 We also have Edna Greene Medford. She's  
3 the Chair of the Department of History at Howard  
4 University. She received her PhD from the University  
5 of Maryland in U.S. History. She's also published  
6 numerous books on African-Americans during the Civil  
7 War.

8 She's on the Scholar Advisory Circle for  
9 the Lincoln Cottage itself and she's also the author  
10 of several books including the Emancipation  
11 Proclamation, Three Views.

12 The third and final individual we have  
13 selected is George Rutherglen. He is a John Barbee  
14 Minor Distinguished Professor of Law at the University  
15 of Virginia. He's a former law clerk to Supreme Court  
16 Justice William O. Douglas, John Paul Stevens.

17 And, he has published numerous articles  
18 about civil rights, and in particular, Civil Rights in  
19 the Shadow of Slavery.

20 So, these three individuals should bring  
21 the type of caliber of scholar and academic, you know,  
22 interest that you will be able to appreciate, we hope.

23 And then, the panel will be opened up to  
24 after they've -- they'll each get 20 minutes to, you

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1 know, discuss their views and their viewpoints on the  
2 Emancipation Proclamation -- I'm sorry, on the 13th  
3 Amendment and then we'll open it up for 25 minutes of  
4 question and answers for the Commissioners.

5 So, the Commissioners that wish to  
6 participate or, you know, make a statement or a remark  
7 at that time would be appropriate, and of course, ask  
8 these individuals their views and, you know, what  
9 they've just commented on.

10 So, we're very excited about that. That  
11 should end at approximately -- that should begin at  
12 about 11:30 and end about 11:55.

13 We're going to have five minutes of closing  
14 remarks by the Vice Chair. And, we're hoping the event  
15 will end at approximately 12:00 or shortly thereafter.

16 We will have -- we're looking into having  
17 a shuttle bus available here in the morning prior to  
18 going to the Lincoln Cottage. So, those of you that  
19 wish to ride on the shuttle bus and special assistants  
20 and staff will be able to.

21 We're hoping that once the event ends,  
22 we'll be able to come back here, get back here about  
23 12:30 there and about so that you have a little bit of  
24 time to freshen up and have some lunch.

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1                   And then, perhaps, and then we're planning  
2                   on starting the hearing at 2:00 p.m. I'm sorry, the  
3                   business meeting of the Commission at 2:00 p.m. We  
4                   believe it will go maybe an hour and a half, hour or  
5                   maybe a little shorter.

6                   I think the General Counsel's office is  
7                   looking to have a period of time for some ethics  
8                   training for the Commissioners since many of you will  
9                   be here. If you're not, they'll work something else  
10                  out.

11                  And then, after that, we're going to have  
12                  a holiday party for the staff with the Commissioners  
13                  immediately thereafter, maybe start about 4:00,  
14                  something like that for an hour, hour and a half.

15                  And, I understand that some Commissioners  
16                  have been graciously -- have graciously offered to  
17                  provide some, you know, refreshments and food for the  
18                  party. So, we want to thank the Commissioners for  
19                  their generosity in doing that as well.

20                  So, that's what I have at this point on the  
21                  Lincoln Cottage. Again, you will be getting an email  
22                  from me asking for your invitations and then, we'll also  
23                  send you a copy of the Evite so you can see what is being  
24                  sent to your guests.

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1                   So, do you have any questions?

2                   Yes, Commissioner Narasaki?

3                   COMMISSIONER NARASAKI: Yes, I understand  
4                   that the plan was to allot so many invitations per  
5                   Commissioner.

6                   MR. MORALES: Yes.

7                   COMMISSIONER NARASAKI: But, I'm think  
8                   it's important for the staff to think about who are  
9                   stakeholders apart from who we might want to invite.  
10                  For example, Members of Congress, members in the  
11                  Administration, who are our stakeholders before we  
12                  individually decide what we want to do.

13                  So, my suggestion would be to set aside  
14                  some number for people that, as an institution, the  
15                  Commission should be inviting.

16                  MR. MORALES: I think that's a great idea.  
17                  We'll very much do so. We'll see if your --

18                  COMMISSIONER NARASAKI: In addition, you  
19                  might want to invite some media as well.

20                  MR. MORALES: Yes, we're looking into  
21                  that. We've been told that C-SPAN is very interested  
22                  in taping it. And, the Lincoln Cottage will tape it  
23                  so that we'll have it available to put onto the website  
24                  so that folks can catch that link and see what the event

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1 was.

2 We looked at -- we looked into web  
3 streaming and to, you know, doing it live but it was  
4 too expensive and the Lincoln Cottage didn't have the  
5 facilities or the ability to do that. And we would have  
6 had to bring all that equipment in and it would have  
7 been a much more expensive.

8 But, I'd definitely like to work with the  
9 Commissioners and any ideas they have of some, you know,  
10 distinguished stakeholders or others that we should  
11 invite.

12 Our only concern is that if we invite them,  
13 we want to make very clear to them that they're not going  
14 to have a speaking role. This is, you know, a lot of  
15 times, Members of Congress won't show up unless they're  
16 the ones that get to speak. And I wouldn't want to  
17 disappoint them.

18 But, in any case, yes, definitely, we'll  
19 work with you and your staff and the staff assistants  
20 to get some names.

21 Thank you.

22 Any other questions?

23 VICE CHAIR TIMMONS-GOODSON: This is not  
24 a question, but of course, this program has not taken

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1 place yet, but I'd like to say based on what I've heard,  
2 it's going to be a grand event and I can already tell  
3 that a lot of work has gone into it. And so, I applaud  
4 all that have worked on it thus far.

5 MR. MORALES: Well, thank you. I, you  
6 know, obviously, the credit goes to a lot of the staff.  
7 Barbara's really stepped up to make a big difference  
8 as well as Pam and the special assistants. I mean I've  
9 worked with, you know, Alison and Sheryl and Amy and  
10 Jason, they've all, you know, kind of given their input.

11 And, you know, obviously, they speak for  
12 the Commissioners and wanted to make sure that, you  
13 know, it's a quality event that the Commission can feel  
14 proud of and we hope that will be the end result and  
15 that's what we're working towards.

16 So, thank you.

17 **II. PROGRAM PLANNING**

18 **DISCUSSION AND VOTE ON APPROVAL OF**

19 **LETTER TO ATTORNEY GENERAL LYNCH**

20 **REGARDING PROSECUTIONS OF CHINESE AMERICANS**

21 **FOR SPYING AND ESPIONAGE**

22 CHAIRMAN CASTRO: Great. Now we move on  
23 to a discussion and vote on a letter to Attorney  
24 General Lynch regarding prosecutions of Chinese

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1 Americans for spying and espionage.

2 I'll turn this one over to Commissioner  
3 Narasaki.

4 COMMISSIONER NARASAKI: Yes, thank you,  
5 Mr. Chair.

6 I have proposed a draft -- a letter to  
7 Attorney General Lynch concerning the recent  
8 prosecutions of Chinese American scientists for  
9 alleged spying and economic espionage.

10 According to a recent article in Science  
11 Magazine, in the past five years, five Chinese born  
12 scientists have been accused of trade secret theft or  
13 economic espionage only for the federal government to  
14 drop the charges.

15 In one case involving a Temple University  
16 physics professor, Mr. Xiaoxing, who was arrested for  
17 allegedly sharing confidential schematics of  
18 superconductor equipment with scientists in China.

19 The FBI agents raided his home with guns  
20 drawn and he was taken away in handcuffs in front of  
21 his wife and children.

22 He's a naturalized citizen and the charges  
23 were dropped after other scientists informed the  
24 Government that the blueprints he shared were not

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1 actually for the equipment that he was charged with  
2 sharing and, in fact, were not under any kind of trade  
3 secret.

4 Now, of course, he was cleared and I want  
5 to acknowledge the, you know, the courage of the U.S.  
6 Attorneys who have dropped charges when they're faced  
7 with evidence that there are, in fact, is a total lack  
8 of evidence which has happened in numerous occasions  
9 because of mistakes about what they're even basically  
10 being charged with having taken.

11 It is not clear whether racial profiling  
12 is involved in the targeting investigations, but there  
13 does appear to be enough instances of a rush to judgment  
14 and a lack of sufficient care taken before someone is  
15 arrested when Chinese Americans are the target.

16 Over 40 Members of Congress just this week  
17 and also, I think, almost 50 Asian and Chinese American  
18 organizations have raised similar concerns and have  
19 asked for the Attorney General to take a look at this  
20 and make sure that what they are doing is fair and  
21 complies with what our values are of due process.

22 So, accordingly, I'm asking the Commission  
23 to call for the Department of Justice to conduct an  
24 investigation as to whether federal investigators and

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1 prosecutors either improperly or over relying on race.  
2 Or, need to increase training and oversight over the  
3 ongoing and future investigations to make sure that,  
4 in fact, these gross errors of in terms of evidence and  
5 judgment do not happen again.

6 Even though these individuals get cleared,  
7 for example, Dr. Xi who was the head of his department  
8 and he lost that position. In addition, the attorneys  
9 have put such pressure on his family that his daughter  
10 had to consider whether she had to withdraw from  
11 college.

12 So, even once you're cleared, there are  
13 consequences to families wrongly charged.

14 CHAIRMAN CASTRO: Do you have a motion?

15 COMMISSIONER NARASAKI: So, I move that  
16 the Commission send the draft letter to the Honorable  
17 Loretta Lynch.

18 I want to thank the Commissioners, my  
19 fellow Commissioners, for their constructive comments.  
20 We dialed back the tone a little bit of the letter and  
21 I believe the special assistants all got the redline  
22 of the updated draft letter.

23 CHAIRMAN CASTRO: Is there a second?

24 COMMISSIONER ACHTENBERG: I second it.

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1 CHAIRMAN CASTRO: Okay, any discussion?

2 VICE CHAIR TIMMONS-GOODSON: The only  
3 thing that I would add, Mr. Chair --

4 CHAIRMAN CASTRO: Please turn your mic a  
5 little closer.

6 VICE CHAIR TIMMONS-GOODSON: The only  
7 think that I would add, Mr. Chair, is in light of eth  
8 events going on around the world and here in this  
9 country, I think this letter's a very appropriate  
10 reminder. And, I support it.

11 CHAIRMAN CASTRO: Okay. Any other  
12 discussion? If not, I'll call the question.

13 All right, Madam Vice Chair, how do you  
14 vote?

15 VICE CHAIR TIMMONS-GOODSON: Yes.

16 CHAIRMAN CASTRO: Commissioner Narasaki,  
17 how do you vote?

18 COMMISSIONER NARASAKI: Yes.

19 CHAIRMAN CASTRO: Commissioner Kladney,  
20 how do you vote?

21 COMMISSIONER KLADNEY: Yes.

22 CHAIRMAN CASTRO: Commissioner  
23 Achtenberg, how do you vote?

24 COMMISSIONER ACHTENBERG: Yes.

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1                   CHAIRMAN CASTRO: Commissioner Kirsanow,  
2                   how do you vote?

3                   COMMISSIONER KIRSANOW: I appreciate  
4                   Commissioner Narasaki's work on this, but for those  
5                   particularly by the Vice Chair, while taking a  
6                   different conclusion, I think we have to be careful as  
7                   a Commission, while although ensuring as for which we  
8                   are poorly qualified in.

9                   This is an area that is very sensitive and  
10                  we have to largely look at whether or not there is some  
11                  type of unresolved prosecution.

12                  This is a very narrow area and I don't  
13                  really know that I've got sufficient information to  
14                  take a vote, so I'm going to abstain.

15                  CHAIRMAN CASTRO: Commissioner Heriot,  
16                  how do you vote?

17                  COMMISSIONER HERIOT: I have a lot of  
18                  sympathy for this letter and it's possible that I might  
19                  write something else. But, I'm going to have to  
20                  abstain on this. I just feel like I don't know enough  
21                  to vote yes.

22                  CHAIRMAN CASTRO: And, I vote yes.

23                  So, we have a motion that passes with five  
24                  yeyes and two abstentions. Okay, and then we'll have

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1 that put on appropriate letterhead and sent out.

2 **III. MANAGEMENT AND OPERATIONS**

3 **REPORT BY SAC CHAIR FOR KANSAS**

4 CHAIR CASTRO: We now move on to  
5 Management and Operations. Did you want to handle  
6 that?

7 MR. MORALES: Yes, Mr. Chairman, thank  
8 you.

9 Before I get into the staff report, I'd  
10 just like to open it up to David Mussatt who I believe  
11 is on the line. We have the SAC Chair for Kansas who  
12 will give us an update on their findings and their  
13 report.

14 COMMISSIONER NARASAKI: I'm sorry, before  
15 we do that, I forgot to ask if we -- if the Commission  
16 could ask the staff to do a press release about the  
17 letter?

18 CHAIRMAN CASTRO: Yes, we'll do that.

19 MR. MORALES: Yes.

20 COMMISSIONER NARASAKI: Thank you.

21 CHAIRMAN CASTRO: Yes, so it's the Kansas  
22 Report on Seclusion and we started in Kansas schools.  
23 It was an advisory memo that was presented to us.

24 MR. MORALES: And, the Kansas, you know,

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1 SAC had worked very hard on this and wanted to report  
2 to the Commissioners.

3 And so, we've been in touch with them and,  
4 David, I know you're on the line, so I'll let you  
5 introduce the SAC Chair.

6 David? David?

7 CHAIRMAN CASTRO: Maybe he's not on the  
8 line.

9 MR. MORALES: Maybe he's not on the line.

10 CHAIRMAN CASTRO: Is the SAC Chair on the  
11 line?

12 MR. MORALES: Is the SAC Chair on the line?

13 MS. KRONK WARNER: Yes, this is me, I'm on  
14 the line.

15 MR. MORALES: Oh, okay. Well, then, for  
16 some reason, we're having technical difficulties with  
17 David, but please, introduce yourself and go forward  
18 with your presentation.

19 MR. KRONK WARNER: Great, thank you so  
20 much and I appreciate the time and attention of the  
21 Commissioners on this issue. We certain appreciate  
22 you taking a look at it.

23 My name's Elizabeth Kronk Warner, and just  
24 by way of brief introduction, in addition to serving

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1 as Chair of the Kansas Advisory Committee, I am also  
2 a professor of law and Associate Dean for the University  
3 of Kansas School of Law and a Citizen of the Sault Ste.  
4 Marie Tribe of Chippewa Indians.

5 Although, I do want to make clear that I'm  
6 speaking in my capacity as Chair of the Committee and  
7 not in my capacity as an employee of the University of  
8 Kansas today.

9 I'd also just like to briefly start off by  
10 thanking David and also Melissa Wojnaroski for their  
11 wonderful support and work. As I'm sure you're aware,  
12 we couldn't do what we do as a Committee without their  
13 support. So, I'm very appreciative of all they do and  
14 just want to acknowledge them.

15 So, the report that we have sent to you and,  
16 hopefully, I'm going to assume that everybody has a copy  
17 of that, so I won't waste your time by just reading the  
18 report, is specifically an issue that was brought to  
19 our attention as one of potential concern in Kansas,  
20 and that's the issue of seclusion and restraint.

21 And, as you saw in the report, initially,  
22 we looked at this from the lens of disability because,  
23 of course, disability is part of the Commission's  
24 charge. But then, as you'll see throughout the report,

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1 we believe that there may be intersections with race  
2 as well.

3 And so, that, as we'll talk about in a  
4 moment, one of our recommendations to the Commission  
5 is that additional information gathering as to that  
6 intersection would be very helpful. But, at the very  
7 least, we know that this is potentially an issue, or  
8 we received testimony to the fact that this is an issue  
9 with disabled people.

10 And so, we held a hearing on this issue on  
11 March 23rd of this year. And, I just want to bring your  
12 attention to the second full paragraph of our report  
13 on page one to highlight the fact that the purpose of  
14 this look was limited in scope because, as you may be  
15 aware, we're actually gearing up as a committee to  
16 really do an in depth and substantial look at voting  
17 rights in Kansas.

18 So, we didn't have the time, quite frankly,  
19 to really go in depth on this issue. But, we wanted  
20 to get a sense of whether there was an actual problem  
21 and then whether federal intervention or federal  
22 involvement would be appropriate.

23 So, I do want to highlight the fact that  
24 this was a limited look at this particular topic. And,

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1 as you'll see in our recommendations, we actually  
2 recommend that the Commission look at this a little bit  
3 more in depth based on what we discovered in our own  
4 hearing.

5 And then, of course, this memorandum that  
6 you received and the recommendations were approved by  
7 a majority of our committee on May 27th of 2015.

8 In terms of background, it is important to  
9 note that seclusion and restraint can be particularly  
10 detrimental to children with disabilities. On page  
11 two of the report, you'll see that the National  
12 Disability Rights Network says that children with  
13 disabilities are at increased risk of injury, both  
14 mentally and potentially physically, through seclusion  
15 and restraint. So, this is a vulnerable population.

16 Also, currently, there are federal laws in  
17 place to protect children in medical institutions and  
18 hospitals and inpatient institutions, but we currently  
19 don't have federal regulations in place for children  
20 in schools.

21 Now, we do have the Department of  
22 Education's restraint and seclusion resource document,  
23 but that is not binding on schools, that is a guidance  
24 document.

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1                   So, right now, we don't have any binding  
2 federal law on the issue of seclusion and restraint in  
3 schools, but we do have it in other contexts.

4                   Now, as the memo points on page three,  
5 there could potentially be some protection for students  
6 with disabilities under other federal Statutes such as  
7 the Individuals With Disabilities Education Act,  
8 Section 504 of the Rehabilitation Act and then also,  
9 of course, the Americans With Disabilities Act.

10                  The protections may exist, however, that  
11 concrete, clear protection doesn't seem to be spelled  
12 out. And, as you'll see in the testimony and our  
13 recommendations, that's one of the areas of why we think  
14 that it would be helpful for the Commission to do  
15 increase investigation is to clear up some of these  
16 areas of confusion.

17                  And then, continuing on on page three,  
18 there's a wide variety of ways in which the States have  
19 addressed this issue. And, in fact, the 2009 GAO  
20 report concluded that 19 States including Kansas, at  
21 the time, had no laws or regulations related to use of  
22 seclusion and restraints.

23                  And, then of course, the paragraph goes on  
24 to explain that other States have adopted various laws

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1 on this particular issue.

2 Now, in 2013, here in Kansas, the State  
3 Board of Education passed the Emergency Safety and  
4 Intervention Regulation which remain in effect today.  
5 And, if you look at page four of our report, you'll see  
6 the six things that are required under the Emergency  
7 Safety and Intervention Regulation.

8 Now, the concern, if you look in that first  
9 paragraph on page four, is that, while certainly these  
10 six things are helpful and fill that void that the GAO  
11 report talked about in 2009, there's still a concern  
12 from some about implementation and enforcement of those  
13 standards because implementation and enforcement is  
14 left completely to the digression of the individual  
15 school districts.

16 So, there's confusion about  
17 implementation and enforcement and also, there's not  
18 uniformity.

19 Also continuing on on page four, data  
20 collection and reporting is varying widely by State.  
21 And, one thing I do want to draw your attention is the  
22 last sentence on the second paragraph on page four which  
23 says that as part of this project, our committee issued  
24 a formal request for seclusion and restraint data to

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1 the Kansas State Department of Education.

2 The Department noted that available data  
3 was limited as prior to 2013 data reporting for each  
4 school was not mandatory.

5 And then, if you continue on page five,  
6 furthermore, the committee's request for available  
7 data to be disaggregated by disability status, race and  
8 sex was denied by the Data Release Board.

9 So, one of the challenges that our  
10 committee encountered was, even though we submitted  
11 this request to the State for the information, we didn't  
12 receive it. We resubmitted a request and we didn't  
13 receive it. So, we did encounter challenges in  
14 obtaining that information the State.

15 Moving on on page five, the first full  
16 paragraph does talk about the fact that the committee  
17 recognizes that there is some data that suggests that  
18 there is intersecting disparities on the basis of race  
19 and color. So, again, this is something, as you'll see  
20 in our recommendations, the committee -- excuse me --  
21 to the Commission that additional information would be  
22 helpful.

23 Moving on to our actual panel testimony  
24 that the committee received, you'll see that we

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1 received testimony from Tonya Wade who is a parent who  
2 spoke really passionately and forcibly about some  
3 significant trauma, both physical and emotional, that  
4 her daughter encountered as a result of seclusion.

5 We also heard from Kathleen Johnson who's  
6 an attorney with the Disability Rights Center of  
7 Kansas. And, her testimony, as you can see from the  
8 report, focused on some confusion in the existing laws,  
9 specifically, some confusion about what constitutes  
10 immediate danger.

11 She also spoke about some concerns about  
12 the complaint process that exists. Parents expressed  
13 concern that there might be retaliation from the school  
14 districts and also that there's no clarity as to when  
15 seclusion and restraint is used.

16 Also, I would specifically point out the  
17 second full paragraph on page seven of her testimony  
18 or the memo summary of her testimony, speaks to KAR  
19 91-42-1 and 91-42-2 which are specifically mentioned  
20 in the Office of General Counsel's report to David  
21 Mussatt which is dated November 17 on our memorandum.  
22 So, we'll come back to that at the very end.

23 But, I do want to note that Ms. Johnson  
24 mentions those provisions in her testimony and spoke

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1 specifically to them.

2 We also heard from Laura Jurgensen from the  
3 State Department of Education who spoke about the  
4 State's efforts and the State implementation.

5 Ms. Jurgensen also noted, if you look at  
6 the first full paragraph on page nine, that there's  
7 currently no federal law governing the use of seclusion  
8 and restraint in schools, so she noted the absence of  
9 federal law as well.

10 And then, we also heard from Terry Collins,  
11 Legislative Liaison for the Kansas Association of  
12 Special Education who testified about the current  
13 regulations that are in place and spoke about how the  
14 purpose of these regulations was really to address some  
15 of the concerns such as those that were mentioned in  
16 the 2009 GAO report.

17 So, Kansas has certainly taken efforts  
18 since that 2009 report to, again, fill the void.

19 That brings me to our committee's  
20 conclusions from our hearing.

21 First off, as we mentioned, as I've  
22 mentioned a couple of times, there are no clear federal  
23 rules addressing children with disabilities in schools  
24 in regards to seclusion and restraint.

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1                   Also, the effectiveness, even though  
2                   Kansas certainly has taken steps in this regard since  
3                   2009 with the passage of the regulations in 2013, the  
4                   effectiveness of those regulations is unclear.

5                   There's also a disconnect between parents  
6                   perception and administrative perception. And, one of  
7                   the concerns that we heard in the testimony was that  
8                   implementation and enforcement is left to the  
9                   individual school districts so we don't have uniformity  
10                  on these issues.

11                  And then also, another concern is that the  
12                  procedures for data collection are left to the  
13                  individual school districts, so it's not clear whether  
14                  or not we're getting uniform data. And, again, so that  
15                  makes it very difficult for us to get data just  
16                  aggregated by race, color, disability or sex as a result  
17                  of that.

18                  And then, last, we also concluded that  
19                  there appear to be barriers to effective dispute  
20                  resolution.

21                  As a result of those, you'll see that our  
22                  recommendations start on page 13. The first thing is  
23                  we recommend that the Commission should collaborate  
24                  with the U.S. Department of Education to review state

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1 by state data and to take a deeper look at this issue  
2 and to see where there might be disparate impacts based  
3 on disability or potential sex, race color, because,  
4 as we mentioned in our report, we encountered obstacles  
5 to getting effective data.

6 And then, our second recommendation is  
7 that, if the Commission should determine that there is  
8 a disparate impact, then the Commission should issue  
9 specific recommendations to the U.S. Department of  
10 Education that govern the practices under the U.S.  
11 Constitution.

12 Also, it would be helpful as the committee  
13 determined in its hearing and its findings, that a clear  
14 complaint and appeals process would be very helpful  
15 because, as was elicited in our testimony, there  
16 appears to be some confusion as to complaint and appeal  
17 processes.

18 And then, last but not least, I also wanted  
19 to just draw your attention to page 14. Our fourth  
20 recommendation, is that, as I mentioned earlier, we did  
21 not receive a response from the Department of  
22 Education, U.S. Department of Education I should  
23 specify, as to our inquiry into this topic. And, it's  
24 my understanding that 42 USC Section 1775(b)(e)

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1 specifies that all federal agencies shall cooperate  
2 fully.

3 So, we were disappointed that we did not  
4 receive cooperation from the U.S. Department of  
5 Education and we would appreciate the Department of  
6 Education's cooperation in the future because this is  
7 obviously a really important issue, especially for  
8 children with disabilities.

9 And then, lastly, I'll just mention, I  
10 received a copy of the Office of General Counsel's  
11 memorandum to David Mussatt. I personally haven't had  
12 a chance to talk to my entire committee. I have no  
13 objections to the recommendation to include the  
14 language that is included on page one.

15 I would just point out the General  
16 Counsel's language references the KAR 91-42-1 and  
17 91-42-2 which Kathleen Johnson does or did talk about  
18 in her testimony which is captured at page seven.

19 And, as she specifies in her testimony,  
20 even with passage of those regulations, she indicated  
21 that she or her center still has two concerns, first,  
22 that the proposed amendment limits parents to  
23 requesting an administrative review regarding one of  
24 nine identified types of issues.

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1                   And then, second, that the authority of the  
2 hearing officer is very discretionary.

3                   So, those two regulations were addressed  
4 in the testimony to the committee.

5                   And, that constitutes my report. Again,  
6 I very much appreciate your time and attention and I  
7 would be happy to answer any questions.

8                   CHAIRMAN CASTRO: Madam Chair, this is  
9 Chair Castro.

10                  First of all, thanks for serving as Chair  
11 of the SAC. I know that's important work and we  
12 appreciate your willingness to serve the people of your  
13 State but also to work with us at the Commission on  
14 really important topics like this.

15                  I can tell you one thing we can certainly  
16 do right off the bat is send this report to the  
17 Department of Education on our behalf. We can talk  
18 among Commissioners to see if maybe there's something  
19 more specific we could send in terms of asking for  
20 action. But, we will review this and discuss amongst  
21 ourselves what more substantive steps we could take to  
22 support your efforts here.

23                  I did have a question. There's been a lot  
24 of news recently about, in essence, criminalization of

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1 schools and we saw some recent videos where youth were  
2 being essentially subjected to use of force by local  
3 community affairs police officers.

4 I would image some children with  
5 disabilities have some issues which may be  
6 misinterpreted as acting out or other things. In your  
7 briefing and in your hearing on this topic, did you run  
8 into any issues with regard to how the children are  
9 being treated when it comes to interactions with law  
10 enforcement within the schools?

11 MS. KRONK WARNER: Yes, and so first, let  
12 me just start off by saying thank you so much for  
13 forwarding this on to the Department of Education. We  
14 very much appreciate that.

15 And, as to your question as to policing in  
16 the schools, unfortunately, no. My recollection is  
17 that none of the individuals who testified in front of  
18 us specifically spoke to the issue of policing. And,  
19 unfortunately, our hearing was relatively limited in  
20 scope.

21 But, I will say that kind of related to that  
22 issue that you raised, Chairman, about the fact that  
23 children with disabilities, somehow their actions can  
24 sometimes be misinterpreted, Kathleen Johnson did

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1 testify to the fact that, and you'll see that on page  
2 six, the first paragraph of her testimony, that  
3 increased information or clarification of what  
4 constitutes an immediate danger would be helpful for  
5 exactly the reasons that you're articulating that  
6 sometimes the actions of children with disabilities may  
7 be misinterpreted. And so, increased clarification on  
8 that immediate danger standard would be helpful.

9 And, she also recommends serious physical  
10 harm, but at the very least, increased clarification  
11 on immediate danger would be helpful.

12 CHAIRMAN CASTRO: Yes, yes. We held a  
13 briefing on the police use of force in New York earlier  
14 this year and we had testimony from the Disability  
15 Rights community that, I forget the exact number, but  
16 well over half of the instances of use of deadly force  
17 by police involve someone with a disability. So, you  
18 know, it's clearly an issue that's on our radar screen.

19 Other Commissioners have questions?

20 Commissioner Narasaki?

21 COMMISSIONER NARASAKI: Yes, thank you,  
22 also and thank you very much for this really  
23 well-written memo. It raises a lot of important  
24 issues.

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1                   I had a question, there's a letter in  
2                   Appendix C from the Kansas Department of Education,  
3                   State Department of Education, and if I understand it  
4                   correctly, it's requesting that the Office of Civil  
5                   Rights monitor statewide implementation. Are they  
6                   referring to the Department of Education's Office for  
7                   Civil Rights? Because it was directed to the Director  
8                   of the State Advisory Committee's David Mussatt for the  
9                   Commission.

10                   MS. KRONK WARNER: Yes, and that was,  
11                   quite honestly, something that we were confused as  
12                   well. We were uncertain whether that was a statement  
13                   from Director Riley that she would like to see the State  
14                   take care of that and it wasn't something that we were  
15                   able to get increased clarity from her.

16                   But, if that would be helpful to the  
17                   Commission, I would be delighted to reach out to  
18                   Director Riley to get clarification on that, but we have  
19                   not yet received clarification from her.

20                   COMMISSIONER NARASAKI: I think that  
21                   would be helpful because it goes to what the Chairman  
22                   mentioned in terms of what the Commission might  
23                   consider doing in terms of our request to the Department  
24                   of Education.

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1 MR. KRONK WARNER: Yes, I'd be happy to  
2 follow up.

3 CHAIRMAN CASTRO: All right, thank you.

4 Any other questions or comments from  
5 Commissioners?

6 Well, hearing none, we want to thank you,  
7 Chair Warner, for your presentation and your service.  
8 Thank you.

9 And, we'll follow up with you on next  
10 steps.

11 MR. KRONK WARNER: Okay, wonderful.  
12 Thank you so much.

13 CHAIRMAN CASTRO: You're welcome. Thank  
14 you.

15 Next, we have our Staff Director's report.

16 **III. MANAGEMENT AND OPERATIONS**

17 **STAFF DIRECTOR'S REPORT**

18 MR. MORALES: Well, thank you, Mr. Chair.

19 Mr. Chairman, of course, you have the  
20 report. I just want to call your attention to three  
21 things that aren't in our report that I wanted to bring  
22 to your attention.

23 One, I want to do a shout out and recognize  
24 Evelyn Bohor. I mispronounced her name, Bohor, right?

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1 Correct. Okay, thank you.

2 She's an Administrative Assistant for our  
3 Rocky Mountain Regional Office. She's been in the area  
4 working with our Eastern Regional Office helping them  
5 update their file system. She's come out here as part  
6 of her duties and responsibilities working with the  
7 regional staff and was very helpful. And so, I want  
8 to thank her for coming and helping get that.

9 You know, as the Commissioners all know and  
10 have heard on numerous occasions, we're understaffed  
11 and we do the best we can with Band-Aids and scotch tape.  
12 And so, we were able to secure her services from Rocky  
13 Mountain administrative office for a week and a half.

14 And so, you know, we're going to look at  
15 all opportunities to move staff around when we have some  
16 holes that need to be filled. So, thank you, Evelyn.

17 Second, I want to call the attention to the  
18 Commissioners that we, yesterday, posted the 2015 audit  
19 report that was sent to the Office of Management and  
20 Budget. Our auditors completed their work on it. It  
21 is on the website for all of you to examine.

22 The opinion that was given by the auditors  
23 was something called a disclaimer which means that what  
24 happened was these auditors went back to 2010 to do a

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1 more rigorous analysis of our financial statements and  
2 an enormous amount of work went into it by the staff.

3 I really want to thank Pam, Tina, John and  
4 that's it, sorry, for their hard work -- I thought I  
5 was omitting somebody, I apologize -- for the hard work  
6 they did in pulling those staff together -- oh and  
7 Michelle, as well -- and a lot of the work that was done  
8 to get ready for the audit, to pull all the files  
9 together.

10 It's ongoing and so that's part of the  
11 reason why we got a disclaimer.

12 We're very confident, or I should say we're  
13 confident, that we'll get a, you know, an opinion next  
14 year that will be a positive opinion. And so, we think  
15 all the hard work done and the steps taken will result  
16 in a new opinion next year.

17 So, we put things in place for that. If  
18 any Commissioners have individual questions or would  
19 like to talk to me about it, please feel free to contact  
20 me.

21 And lastly, I just wanted to let you know  
22 that I've been working with the special assistants, the  
23 General Counsel and with David Mussatt in convening a  
24 working group of our panel here to look at revisions

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1 and recommendations for the administrative  
2 instructions, the AI, on SAC appointments.

3 You know, since I've come on Board, there  
4 have been challenges with getting SACs prepared and  
5 getting it put into an area or to shape that  
6 Commissioners are willing to vote for and support.

7 And, there have been a lot them, you know,  
8 back and forth on it. And I just finally have reached  
9 a point where I think, you know, folks are frustrated  
10 and dissatisfied and I really am hoping that some of  
11 the individuals working, Alison has stepped up as well  
12 as Sheryl to represent the sides of the Commissioners  
13 to present some recommendations.

14 I'm hoping within the next 30 days, we'll  
15 have some recommendations that we can accept and I can  
16 present to the Commissioners as well.

17 So, with that, Mr. Chairman, I thank you  
18 and turn it back over to you.

19 CHAIRMAN CASTRO: Any questions for the  
20 Staff Director?

21 Hearing none, I will then move on to our  
22 State Advisory Committee appointments.

23 **IV. STATE ADVISORY COMMITTEE APPOINTMENTS**

24 **MARYLAND**

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1                   CHAIRMAN CASTRO:    The first we'll deal  
2                   with is Maryland.   So, I'm going to make a motion that  
3                   the Commission appoint the following individuals to the  
4                   Maryland State Advisory Committee based upon the  
5                   recommendation of our Staff Director:

6                   Thomas Mackall, George LaNoue, Pace  
7                   McConkie, Susannah Prucka, Genevieve Segura, Leonard  
8                   Addison, Pamela Bennett, Zainab Chaudry, Doris Cowl,  
9                   Gregory Dolin, Ernie Dominguez, Walter Howell, Jr.,  
10                  Tara Huffman, Evelyn Kelly, David Kim, Jennifer Mathis.

11                  Let me make sure I've got everybody here.  
12                  Okay, and also pursuant to this motion that Thomas  
13                  Mackall shall serve as the Chair of the Maryland State  
14                  Advisory Committee.

15                  These members will serve as uncompensated  
16                  Government employees.    Under this motion, the  
17                  Commission authorizes the Staff Director to execute the  
18                  appropriate paperwork for the appointments.

19                  Do I have a second?

20                  COMMISSIONER NARASAKI:    I second, Mr.  
21                  Chair, and I would really like to thank staff for their  
22                  efforts in responding to my request that slates contain  
23                  younger representatives from the younger generations  
24                  as well as more diversity of religion.    So, I very much

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1 appreciate that effort in terms of putting together  
2 this particular slate.

3 CHAIRMAN CASTRO: Okay. Did I get a  
4 second?

5 COMMISSIONER HERIOT: Mr. Chairman?

6 CHAIRMAN CASTRO: Did I get a second?

7 Just a second, did I get a second?

8 COMMISSIONER NARASAKI: Yes, I did.

9 CHAIRMAN CASTRO: Okay, yes, Commissioner  
10 Heriot?

11 COMMISSIONER HERIOT: I'm going to be  
12 voting no on the Maryland staff. First, because I  
13 think the viewpoint balance is a serious problem.

14 As I count it, there are three candidates  
15 who you could describe as right of center, 12 who could  
16 be described as left of center and one who's up on the  
17 continuum I couldn't figure out.

18 Finally, and I think more importantly, I'm  
19 very disappointed that two very strong conservative  
20 candidates have not been reappointed and that I haven't  
21 been able to get an explanation from our Staff Director  
22 as to why.

23 I think that it's possible that the  
24 explanation for at least one or two of them is that there

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1 have been some conflicts with the staff. I'm very  
2 concerned about the vertical integration problem of the  
3 staff member who works with the SACs decides whether  
4 or not to keep members on that SAC.

5 And I'm very concerned with the problem  
6 that we, as the Commission, are never told why someone  
7 who has been on the SAC in the past is not being  
8 reappointed.

9 I'm also disappointed that a very strong  
10 candidate who previously worked at the Commission has  
11 not been chosen for an appointment, even though there  
12 are obviously several available spaces on the SAC for  
13 someone who holds similar views.

14 It is not like conservatives are being over  
15 represented on the Maryland SAC. So, I plan to vote  
16 no.

17 CHAIRMAN CASTRO: Yes, well, I didn't get  
18 three people I recommended, one of whom has been waiting  
19 for five years. So, but I'm still going to vote for  
20 this because I know that the Staff Director's put  
21 together a subcommittee that's going to address these  
22 kinds of problems for the future.

23 So, but, you know, thank you for your  
24 statement.

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1 I'm going to call the vote now.

2 Vice Chair, how do you vote?

3 VICE CHAIR TIMMONS-GOODSON: Yes.

4 CHAIRMAN CASTRO: Commissioner Narasaki,  
5 how do you vote?

6 COMMISSIONER NARASAKI: Yes.

7 CHAIRMAN CASTRO: Commissioner Kladney,  
8 how do you vote?

9 COMMISSIONER KLADNEY: Yes.

10 CHAIRMAN CASTRO: Commissioner  
11 Achtenberg, how do you vote?

12 COMMISSIONER ACHTENBERG: Yes.

13 CHAIRMAN CASTRO: Commissioner Kirsanow,  
14 how do you vote?

15 COMMISSIONER KIRSANOW: No.

16 CHAIRMAN CASTRO: Commissioner Heriot,  
17 you've indicated no already so I'll mark that down.

18 COMMISSIONER HERIOT: Well, you have to  
19 let me say it.

20 CHAIRMAN CASTRO: Okay, go ahead, say it.

21 COMMISSIONER HERIOT: I vote no.

22 CHAIRMAN CASTRO: Say it loud and proud.

23 COMMISSIONER HERIOT: Oh, I vote no and I  
24 consider this slate to be violation of our AI.

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1 CHAIRMAN CASTRO: Okay, thank you.

2 And, I vote yes.

3 So, that's five yeses to two nos, the slate  
4 passes.

5 **IV. STATE ADVISORY COMMITTEE APPOINTMENTS**

6 **WEST VIRGINIA**

7 CHAIRMAN CASTRO: We now move on to the  
8 West Virginia SAC.

9 I make a motion that the Commission appoint  
10 the following individuals to the West Virginia State  
11 Advisory Committee based upon the recommendation of our  
12 Staff Director.

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

15 CHAIRMAN CASTRO: Let me read the names  
16 and then -- thank you, I appreciate the support already,  
17 though.

18 Sheli Bernstein-Goff, Tara N. Martinez,  
19 James F. Shaffer, Ethel M. Smith, Lisa K. Younis,  
20 Adrienne Belafonte Biesemeyer, Naomi W. Cohen, Attiba  
21 R. Ellis, David E. Gilbert, Ira F. Hartman, Anne M.  
22 Lofaso, Lydia C. Milnes, Jason D. Nicholas, Merideth  
23 D. Smith, Joseph M. Tyree.

24 And then, pursuant to this motion, the

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1 Commission appoints Tara N. Martinez as the Chair of  
2 the West Virginia State Advisory Committee.

3 These members will serve as uncompensated  
4 Government employees. Under this motion, the  
5 Commission authorizes the Staff Director to execute the  
6 appropriate paperwork for the appointments.

7 Do I have a second?

8 VICE CHAIR TIMMONS-GOODSON: You do have  
9 a second, Mr. Chair.

10 CHAIRMAN CASTRO: Thank you, Madam Vice  
11 Chair.

12 Any discussion?

13 COMMISSIONER HERIOT: Mr. Chairman?

14 CHAIRMAN CASTRO: Yes, Commissioner  
15 Heriot?

16 COMMISSIONER HERIOT: I just wanted to say  
17 that I plan to vote against this stack as well which  
18 I believe to be a violation of our AI for clearly  
19 ideological balance.

20 CHAIRMAN CASTRO: Thank you.

21 I'll call the question for a vote.

22 Madam Vice Chair, how do you vote?

23 VICE CHAIR TIMMONS-GOODSON: Yes.

24 CHAIRMAN CASTRO: Commissioner Narasaki,

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1 how do you vote?

2 COMMISSIONER NARASAKI: Yes.

3 CHAIRMAN CASTRO: Commissioner Kladney,

4 how do you vote?

5 COMMISSIONER KLADNEY: Yes.

6 CHAIRMAN CASTRO: Commissioner

7 Achtenberg, how do you vote?

8 COMMISSIONER ACHTENBERG: Yes.

9 CHAIRMAN CASTRO: Commissioner Kirsanow,

10 how do you vote? Commissioner Kirsanow?

11 COMMISSIONER KIRSANOW: No.

12 CHAIRMAN CASTRO: Commissioner Heriot,

13 how do you vote?

14 COMMISSIONER HERIOT: No.

15 CHAIRMAN CASTRO: I vote yes.

16 That's five yeses to two nos, the West  
17 Virginia slate passes.

18 **IV. STATE ADVISORY COMMITTEE APPOINTMENTS**

19 **INTERIM APPOINTMENTS TO THE**

20 **MISSOURI STATE ADVISORY COMMITTEE**

21 CHAIRMAN CASTRO: Now, we have some  
22 interim appointments. We have interim appoints to the  
23 Missouri State Advisory Committee and the Kentucky  
24 State Advisory Committee as well as an appointment to

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1 the Wisconsin SAC Chair.

2 So, let me actually start with Missouri.

3 We have a number of candidates --

4 COMMISSIONER KLADNEY: Mr. Chairman?

5 CHAIRMAN CASTRO: Yes, is that Kladney?

6 COMMISSIONER KLADNEY: Yes.

7 CHAIRMAN CASTRO: Commissioner Kladney?

8 COMMISSIONER KLADNEY: Yes, I just got  
9 these yesterday, I think, if I'm correct.

10 CHAIRMAN CASTRO: I don't recall, but yes,  
11 they --

12 MR. MORALES: That is correct. I had  
13 inadvertently thought I had put it into the packet the  
14 week before, but I noticed I hadn't.

15 COMMISSIONER KLADNEY: And, actually, I  
16 don't -- I've been on the Commission now for a while  
17 and I haven't seen an interim appointment, so I was  
18 wondering if somebody could explain that to me?

19 CHAIRMAN CASTRO: Mr. Staff Director?

20 MR. MORALES: Certainly, and I believe we  
21 also -- David may still be on or he may have gotten back  
22 on the line.

23 Essentially, what's happened is that there  
24 were some exceptional circumstances that occurred with

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1 the three Advisory Committees and that the Chief of  
2 Regional Programs Unit has requested the Commission  
3 take specific actions to address these issues.

4 I can go into each one if you'd like, Mr.  
5 Commissioner.

6 COMMISSIONER KLADNEY: Actually, I was  
7 just wondering if we had the authority to do this,  
8 that's all. And, what are the lengths to the  
9 appointments and things like that just to make sure it's  
10 all correct.

11 CHAIRMAN CASTRO: So, my understanding is  
12 that in Missouri, given the number of replacements that  
13 we needed actually brings the Missouri SAC below the  
14 minimum, is that right?

15 MR. MORALES: That is correct because  
16 numerous -- a number of individuals resigned.

17 CHAIRMAN CASTRO: And, Commissioner  
18 Kladney, I don't know, but this might have been before  
19 you joined the Commission, when Commissioner Titus held  
20 your position, but I know that, in the past, we have  
21 had at least one maybe more instances of a SAC going  
22 below the number of -- minimum number of members to  
23 function.

24 And so, I do know that, in the past, we have

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1 appointed individuals so that that SAC can continue to  
2 function. And those individual -- that individual  
3 served only the term that the person they're replacing  
4 is filling.

5 So, we have done that in the past. Again,  
6 as -- it's not frequent. It's actually rare, but this  
7 SAC in particular is doing a lot of work on the Ferguson  
8 related issue and we want to make sure they continue  
9 to be able to complete that. So, we don't want it to  
10 languish too long.

11 COMMISSIONER KLADNEY: Thank you, Mr.  
12 Chairman.

13 CHAIRMAN CASTRO: You're welcome.

14 COMMISSIONER HERIOT: Mr. Chairman?

15 CHAIRMAN CASTRO: Yes, Commissioner  
16 Heriot?

17 COMMISSIONER HERIOT: I have two thoughts  
18 here. One, on the issue of minimum numbers, this is  
19 one way we could cut down on work for the staff by  
20 reducing the minimum number of members of the SAC so  
21 that they don't have to go to the trouble of making  
22 interim appointments.

23 You know, it's a policy question as to how  
24 much the minimum ought to be, but my position is we'd

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1 be better off with a smaller minimum. It doesn't have  
2 to be the same minimum for the initial appointment that  
3 we have for the SACs.

4 We could say that a committee can continue  
5 as long as it has a minimum of X, but the minimum for  
6 the initial appointment, we could set at X plus two or  
7 something. So, that's one point I have to make.

8 The second is, I'm concerned about why  
9 there have been resignations from the Missouri SAC.  
10 Could the Staff Director speak to that?

11 MR. MORALES: I can and I have a memo from  
12 a memorandum that I received from David Mussatt, Chief  
13 of the Regional Programs Unit.

14 So, in regards to Missouri, in what he --  
15 it's a short paragraph here, so bear with me, in fiscal  
16 year 2015, the Missouri Advisory Committee held nine  
17 publically noticed meetings including two full-day  
18 meetings where testimony was heard regarding the topic  
19 of police community relations in the State.

20 This number of meetings far exceeded the  
21 number of meetings normally held by active committees  
22 and, as a result, three members resigned because they  
23 did not feel that they could fulfill the full-time  
24 commitment necessary to be constructive members.

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1                   Those three members are Anna Crosslin,  
2                   Jalesia McQueen and Michelle Sherod.

3                   To ensure balance and robust debate, the  
4                   DFO for the -- the Regional Director for the Missouri  
5                   Advisory Committee recruited additional potential  
6                   candidates for the Committee and they completed this  
7                   timely and important project.

8                   The action requested by the Chief is that  
9                   the Commission appoint the following individuals to  
10                  serve the Missouri Advisory Committee from the November  
11                  18, 2015 until July 2016 when the terms of all of the  
12                  Committee members expires.

13                  And, these individuals are Chad Flanders,  
14                  Amany Ragab Hacking, Domingo Martinez-Castilla,  
15                  Sabrine Rhodes and David Tyson Smith.

16                  COMMISSIONER HERIOT: So, all of this has  
17                  to do with time commitments and there were no disputes  
18                  that led to this?

19                  MR. MORALES: Correct.

20                  COMMISSIONER HERIOT: That's correct?

21                  CHAIRMAN CASTRO: That's correct.

22                  MR. MORALES: That is correct.

23                  COMMISSIONER HERIOT: Okay.

24                  CHAIRMAN CASTRO: All right, so I'm going

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1 to go ahead and make a motion that the Commission  
2 appoint the following individuals to the Indiana State  
3 Advisory Committee.

4 MR. MORALES: No.

5 CHAIRMAN CASTRO: No?

6 MR. MORALES: That's Missouri.

7 CHAIRMAN CASTRO: I'm sorry, Missouri  
8 State Advisory Committee and that these are interim  
9 appointments to fill the unexpired term of those  
10 individuals who previously stepped down as was  
11 indicated by the Staff Director.

12 So, this is upon recommendation of our  
13 Staff Director, the following individuals are Chad W.  
14 Flanders, Amany Ragab Hacking, Domingo A.  
15 Martinez-Castilla, Sabine Y. Rhodes and David. T.  
16 Smith.

17 These individuals will serve as  
18 uncompensated Government employees. Under this  
19 motion, the Commission authorizes the Staff Director  
20 to execute the appropriate paperwork for the  
21 appointments.

22 Do I have a second?

23 COMMISSIONER NARASAKI: I second and want  
24 to note, I appreciate the staff's efforts to reach out

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1 and recruit Muslim candidates for the various slates  
2 that we have been considering today.

3 CHAIRMAN CASTRO: Any other questions or  
4 comments? If not, I will call the vote on Missouri  
5 interim candidates.

6 Madam Vice Chair, how do you vote?

7 VICE CHAIR TIMMONS-GOODSON: Yes.

8 CHAIRMAN CASTRO: Commissioner Narasaki,  
9 how do you vote?

10 COMMISSIONER NARASAKI: Yes.

11 CHAIRMAN CASTRO: Commissioner Kladney,  
12 how do you vote?

13 COMMISSIONER KLADNEY: Yes.

14 CHAIRMAN CASTRO: Commissioner  
15 Achtenberg, how do you vote?

16 COMMISSIONER ACHTENBERG: Yes.

17 CHAIRMAN CASTRO: Commissioner Kirsanow,  
18 how do you vote?

19 COMMISSIONER KIRSANOW: Abstain.

20 CHAIRMAN CASTRO: Commissioner Heriot,  
21 how do you vote?

22 COMMISSIONER HERIOT: Yes.

23 CHAIRMAN CASTRO: And I vote yes.

24 So, we have six yeses and one abstention,

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1 the slate passes.

2 **IV. STATE ADVISORY COMMITTEE APPOINTMENTS**

3 **INTERIM APPOINTMENT TO THE**

4 **KENTUCKY STATE ADVISORY COMMITTEE**

5 CHAIRMAN CASTRO: Next, we have Kentucky,  
6 and the Kentucky interim appointment, there's only one.

7 So, I'm going to make a motion that the  
8 Commission appoint the following individual to the  
9 Kentucky State Advisory Committee based upon the  
10 recommendation of our Staff Director, Mitchell H.  
11 Payne.

12 And, pursuant to this motion, Mr. Payne  
13 will be a member and serve as an uncompensated  
14 Government employee. Under this motion, the  
15 Commission authorizes the Staff Director to execute the  
16 appropriate paperwork for the appointment.

17 Is there a second?

18 VICE CHAIR TIMMONS-GOODSON: Second.

19 CHAIRMAN CASTRO: Okay, any questions?

20 Do you want to explain?

21 MR. MORALES: Certainly, Mr. Chairman,  
22 thank you for --

23 So, what I received from the Chief of  
24 Regional Programs Unit, David Mussatt, regarding this

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1 appointment is that the Kentucky Advisory Committee was  
2 appointed on July 12, 2015.

3 During the recruitment period, the DFO who  
4 was new to the Commission, the regional staff, reached  
5 out to the returning members' and gave them a deadline  
6 to respond whether they were interested in  
7 reappointment.

8 One member, Mitchell Payne, experienced a  
9 serious personal loss at this time and did not respond  
10 to the request for reappointment. He did reach out  
11 subsequently to the regional staff after the July  
12 appointment.

13 And, at that time, the regional staff found  
14 out about Mr. Payne's loss as well as the major  
15 contributions Mr. Payne had made to the Committee  
16 during his previous tenure on the Committee.

17 Given these exceptional circumstances,  
18 the Regional Office would like to add Mr. Payne to the  
19 Kentucky Committee.

20 The Committee appointed Mitchell Payne to  
21 the Kentucky Advisory Committee -- the action requested  
22 is that the Commission appoint Mitchell Payne to the  
23 Kentucky Advisory Committee from November 18th until  
24 July 11, 2019 when the other committee members terms

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1 expire.

2 CHAIRMAN CASTRO: Any questions?

3 Okay, we'll call it for a vote.

4 Madam Vice Chair, how do you vote?

5 VICE CHAIR TIMMONS-GOODSON: Yes.

6 CHAIRMAN CASTRO: Commissioner Narasaki,  
7 how do you vote?

8 COMMISSIONER NARASAKI: Yes.

9 CHAIRMAN CASTRO: Commissioner Kladney,  
10 how do you vote?

11 COMMISSIONER KLADNEY: Yes.

12 CHAIRMAN CASTRO: Commissioner  
13 Achtenberg, how do you vote?

14 COMMISSIONER ACHTENBERG: Yes.

15 CHAIRMAN CASTRO: Commissioner Kirsanow,  
16 how do you vote?

17 COMMISSIONER KIRSANOW: Abstain.

18 CHAIRMAN CASTRO: Commissioner Heriot,  
19 how do you vote?

20 COMMISSIONER HERIOT: Yes.

21 CHAIRMAN CASTRO: And I vote yes.

22 That's six yeses and an abstention, the  
23 motion passes.

24 **IV. STATE ADVISORY APPOINTMENTS**

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**APPOINTMENT OF THE  
WISCONSIN STATE ADVISORY COMMITTEE CHAIR**

CHAIRMAN CASTRO: Finally, we have a motion to appoint a new Chair for the Wisconsin State Advisory Committee. So, let me make the motion and then the Staff Director can explain the circumstances.

I make a motion that the Commission appoint Naheed N. Bleecker as the Chair of the Wisconsin State Advisory Committee.

Pursuant to this motion, he shall serve as an uncompensated Government employee and the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment.

Is there a second?

VICE CHAIR TIMMONS-GOODSON: Second.

CHAIRMAN CASTRO: Okay, Mr. Staff Director will you explain?

MR. MORALES: Thank you, Mr. Chairman.

Yes, the Wisconsin Advisory Committee was appointed on August 14, 2015. The Commission reappointed Adel Mekraz to be Chair of the Committee.

After the appointment, Mr. Mekraz informed the Regional Office that he would be moving out of the country and had to resign from the Committee.

1                   Therefore, the Committee currently has no  
2                   Chair and under current Commission rules, cannot hold  
3                   a meeting because no one has appointed to call meetings  
4                   and certify meeting minutes.

5                   The regional staff has reached out to the  
6                   Wisconsin Advisory Committee members and only one  
7                   member volunteered who was then nominated by both  
8                   Democratic and Republican members. That individual  
9                   was Naheed Bleecker.

10                  The action requested is that the  
11                  Commission appoint Naheed Bleecker Chairman of the  
12                  Wisconsin Advisory Committee.

13                  CHAIRMAN CASTRO: Thank you.

14                  Any questions?

15                  Let me just say Wisconsin has been one of  
16                  our very active Committees. I have attended some of  
17                  their briefings. I also want to thank Adel for his  
18                  service as Chair. He was a very good and active Chair.  
19                  It's unfortunate he could not participate, but, you  
20                  know, we want to make sure the SAC continues to  
21                  function. So, it's important that we do this.

22                  I'm going to call the question.

23                  Madam Vice Chair, how do you vote?

24                  VICE CHAIR TIMMONS-GOODSON: Yes.

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1 CHAIRMAN CASTRO: Commissioner Narasaki,  
2 how do you vote?

3 COMMISSIONER NARASAKI: Yes.

4 CHAIRMAN CASTRO: Commissioner Kladney,  
5 how do you vote?

6 COMMISSIONER KLADNEY: Yes.

7 CHAIRMAN CASTRO: Commissioner  
8 Achtenberg, how do you vote?

9 COMMISSIONER ACHTENBERG: Yes.

10 CHAIRMAN CASTRO: Commissioner Kirsanow,  
11 how do you vote?

12 COMMISSIONER KIRSANOW: Abstain.

13 CHAIRMAN CASTRO: Commissioner Heriot,  
14 how do you vote?

15 COMMISSIONER HERIOT: Yes.

16 CHAIRMAN CASTRO: I vote yes.

17 The motion passes with six yeses and one  
18 abstention.

19 **V. ADJOURN MEETING**

20 CHAIRMAN CASTRO: That concludes the  
21 business on our Agenda, so I hereby adjourn the meeting  
22 at 12:15 Eastern Time.

23 Thank you, everybody.

24 (Whereupon, the above-entitled matter

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