

U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC BUSINESS MEETING

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FRIDAY, AUGUST 20, 2021

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The Commission convened via
teleconference at 12:00 p.m. EDT, Norma Cantu,
Chair, presiding.

PRESENT:

NORMA V. CANTU, Chair

J. CHRISTIAN ADAMS, Commissioner

STEPHEN GILCHRIST, Commissioner

DEBO P. ADEGBILE, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

STAFF PRESENT:**EVELYN BOHOR****LASHONDA BRENSON****PAMELA DUNSTON, Chief ASCD****ALFREDA GREENE****LENORE OSTROWSKY****MICHELE RAMEY****JOHN RATCLIFFE****SARALE SEWELL****JUANDA SMITH****BRIAN WALCH****MARIK XAVIER-BRIER****COMMISSIONER ASSISTANTS PRESENT:****SHERYL COZART****JASON LAGRIA****CARISSA MULDER****AMY ROYCE****RUKKU SINGLA****ALISON SOMIN****IRENA VIDULOVIC**

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P R O C E E D I N G S

12:02 p.m.

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2
3 OPERATOR: Good day and welcome to the
4 Commission meeting for August 20th. Today's
5 conference is being recorded.

6 At this time, I would like to turn the
7 conference over to Chair Cantu.

8 Please go ahead, ma'am.

9 CHAIR CANTU: Yes, welcome to the
10 business meeting for the U.S. Commission on Civil
11 Rights. The meeting comes to order at noon
12 Eastern Standard Time on Friday, August 20, 2021.

13 My name is Norma V. Cantu, and I thank
14 the staff who completed the public notice needed
15 for this meeting and arranged for this public
16 phone call.

17 I also want to thank the general
18 public for their interesting in attending today.

19 Due to respect for health and safety,
20 the Commissioners are conducting this business
21 meeting by telephone conference. I'd like to
22 confirm that each of the Commissioners is online,
23 and I'll take a roll call at the outset. So,
24 please say, "present" or "here" when I say your
25 name.

1 Commissioner Adams?

2 COMMISSIONER ADAMS: Present.

3 CHAIR CANTU: Commissioner Adegbile?

4 COMMISSIONER ADEGBILE: Present.

5 CHAIR CANTU: Commissioner Gilchrist?

6 COMMISSIONER GILCHRIST: Present.

7 CHAIR CANTU: Commissioner Heriot?

8 COMMISSIONER HERIOT: I'm here.

9 CHAIR CANTU: Commissioner Kirsanow?

10 COMMISSIONER KIRSANOW: Here.

11 CHAIR CANTU: Commissioner Kladney?

12 COMMISSIONER KLADNEY: Here.

13 CHAIR CANTU: Commissioner Yaki?

14 COMMISSIONER YAKI: Yo.

15 CHAIR CANTU: Well, we have full

16 attendance and a quorum of Commissioners is

17 present.

18 Is the court reporter present?

19 MS. CRAWLEY: Yes, ma'am.

20 CHAIR CANTU: Thank you.

21 Is the Staff Director present?

22 MR. MORALES: I am present.

23 CHAIR CANTU: Thank you.

24 Okay. The meeting will now come to

25 order.

1 I. APPROVAL OF AGENDA

2 CHAIR CANTU: I'll begin by the first
3 item of the agenda which is the approval of the
4 agenda. In doing that, I will call whether there
5 are any amendments to the agenda, and then, we
6 will have a vote to approve the agenda.

7 So, do any Commissioners --

8 COMMISSIONER ADAMS: Madam Chairman?

9 CHAIR CANTU: Yes?

10 COMMISSIONER ADAMS: Sorry.

11 CHAIR CANTU: May I finish the
12 sentence? And then, I'll let you interrupt.

13 COMMISSIONER ADAMS: Yes. Sorry.

14 CHAIR CANTU: Okay. Okay. Do any
15 Commissioners wish to amend today's agenda?

16 COMMISSIONER ADAMS: Madam Chairman,
17 Adams.

18 CHAIR CANTU: Please say your name and
19 I'll recognize you.

20 COMMISSIONER ADAMS: Adams.

21 CHAIR CANTU: Adams. Thank you,
22 Commissioner Adams.

23 COMMISSIONER ADAMS: Thank you, Madam
24 Chairman.

25 I would move to amend the agenda today

1 to include taking up the designations of
2 representatives of the Commission on Civil Rights
3 to the Advisory Committee of the United States
4 Election Assistance Commission, in conformance
5 with the AI agreed upon at our April business
6 meeting, and including the names exchanged in
7 conformance with that AI. That is my motion, to
8 amend the agenda to do that.

9 CHAIR CANTU: Thank you.

10 Do I hear a second to that proposal?

11 COMMISSIONER GILCHRIST: Madam Chair,
12 Gilchrist seconds that motion.

13 CHAIR CANTU: I hear a second.

14 So, any discussion on adding that, the
15 agenda item, to discuss confirming the two
16 nominated representatives to the U.S. Election
17 Assistance Commission?

18 COMMISSIONER ADAMS: Madam Chair,
19 Adams.

20 CHAIR CANTU: Yes, Commissioner Adams,
21 please speak.

22 COMMISSIONER ADAMS: Yes. I made this
23 motion because the Election Assistance Commission
24 is waiting for our nominees and there will be
25 work being done that our representatives will not

1 be present to assist with. And we spent a great
2 deal of time at our April business meeting and a
3 great deal of time after that to move this
4 process along. And my effort to amend to the
5 agenda is to move this process along.

6 That's all I have.

7 CHAIR CANTU: Thank you, Commissioner.

8 COMMISSIONER KLADNEY: Madam Chair,
9 Commissioner Kladney here.

10 CHAIR CANTU: Yes, Commissioner
11 Kladney.

12 COMMISSIONER KLADNEY: I don't know if
13 we can proceed with the nominations. I guess we
14 could, but I would like to discuss some AI that
15 governs the nominees to the EAC, or E-A-C,
16 because we had no -- the Commission has nothing
17 structured, in structure, especially because we
18 are nominating a non-Commissioner to the
19 position.

20 It's my understanding that the EAC has
21 a two-year term of office, but I was wondering
22 whether the Commission would like reports from
23 our EAC nominees; the form in which they would be
24 presented: written, verbal, or both. How often
25 they should be provided to the Commission?

1 Also, letting us know what proposals
2 they're making at the EAC; the resulting action
3 taken on them, if any, at the EAC; how many
4 meetings can they miss. I think the EAC has a
5 rule of how many meetings you can miss before
6 you're removed, but I want to make sure that the
7 amount of meetings is okay with us.

8 I think there should be a statement
9 that these appointees cannot speak for the
10 Commission; can't use Commission resources,
11 things like that. I think all that should be in
12 place before we let the nominations go forward.

13 And that's my input. Whether we amend
14 the agenda and discuss that today, or form a
15 group that can draft it. I mean, I don't think
16 it's going to be very difficult to draft some of
17 those things. But I think there should be some
18 responsibility to the Commission or information
19 given to the Commission from our EAC appointees,
20 especially the one -- because if we have a
21 Commissioner onboard that's in the EAC, we can
22 ask them anytime what's going on. However, when
23 we start nominating people outside of the
24 Commission, we have less -- well, we don't have
25 any control over them, but we should, obviously,

1 listen and be informed as to what they're doing
2 because they are a nominee of the Commission.

3 CHAIR CANTU: That's relevant to the
4 discussion.

5 Commissioner Adams, do you have a
6 response?

7 COMMISSIONER ADAMS: I have a
8 question. I'm wondering, Commissioner Kladney, I
9 think you were one of the designees over the last
10 couple of years. What has been the past practice
11 of reporting back to the full Commission the
12 activities of the EAC?

13 COMMISSIONER KLADNEY: There actually
14 hasn't been one. When people inquire -- I'm a
15 Commissioner; Commissioner Yaki is a Commissioner
16 -- we have an obligation to give information when
17 people want to know. I know Commissioner Yaki
18 has informed the Commission from time to time as
19 to what's gone on at the EAC.

20 But I just think that, since we don't
21 have any connection to the outside person -- and
22 this is not -- I mean, if both people were
23 outside people, I'd be saying the same thing,
24 both sides. I just don't think we nominate a
25 person and just not know what's going on, if that

1 makes sense.

2 CHAIR CANTU: For the purpose of folks
3 who are wondering why we're bringing this up,
4 this seems to be the first time we're working in
5 a bipartisan, very collegial way to replace
6 nominees. We've shifted from an old system where
7 it was predominantly the Chair, and now we're in
8 a system that is much more inclusive of the
9 entire body of Commissioners. So, this
10 conversation is the first time we're doing it
11 with regards to appointments.

12 I did inquire with our Staff Director
13 as to whether we had an AI that specified,
14 answered any of these questions of how is
15 reporting made back; how often does the reporting
16 occur? And we know there isn't an explicit AI on
17 that.

18 So, we can continue the discussion, if
19 others want to contribute.

20 COMMISSIONER YAKI: Commissioner Yaki.

21 CHAIR CANTU: Yes, please,
22 Commissioner.

23 COMMISSIONER YAKI: Yes. As the
24 longest-serving member of the Commission to the
25 EAC, one, I have no objection to providing any

1 report on what's going on. I can tell you that,
2 at the present time, there is discussion
3 regarding the advisory role of the Board of
4 Advisors with respect to what are called the
5 implementation components of the Voluntary Voting
6 Security Guidelines, VVSG 2.0, which were adopted
7 by the Commissioners of the EAC early this year.
8 And now, the focus is really about how do you
9 sort of adapt it as time goes on and new
10 information comes in, in order to deal with new
11 guidelines and new standards that come forward.

12 But that is the only activity going on
13 currently right now. There are discussions about
14 protecting poll workers that have been brought up
15 by some members. But the Board of Advisors will
16 probably not have another quarterly meeting until
17 October of this year, at which time -- usually,
18 these are conducted virtually, either by Zoom or
19 by telephone for participation.

20 There are subcommittees that people
21 can be involved in that, when I was Chair, I was
22 very active in appointing people to those to get
23 stuff going for especially the 2020 election.

24 And certainly, the new appointee will
25 have ample opportunity to ask the current Chair,

1 and I would be more than willing to make any
2 introductions as may be necessary to the new
3 Chair for their interest in serving committees
4 and such.

5 But I would be more than happy to
6 report on an ongoing basis to the Commission. I
7 would like to think that, as the first and only
8 repeat Chair of the Board of Advisors, that I
9 served our Commission well and hope to continue
10 to do so in the future.

11 CHAIR CANTU: Thank you.

12 I've not heard anyone speak against
13 adding this to the agenda. So, should we proceed
14 or have I missed some?

15 Commissioner Adams, I think you're --

16 COMMISSIONER ADAMS: I guess we need
17 to vote? Do we need to vote?

18 CHAIR CANTU: No, these are procedural
19 motions that can be, unless there's controversy,
20 we can add that to the agenda today.

21 So, is there someone who would speak
22 against it?

23 (No response.)

24 So, it's been determined that we don't
25 need to take a vote. So, that item will be

1 added.

2 Commissioner, if you don't mind, we
3 will do it at the end, so that we can stay on
4 time with our guest speakers from the advisory
5 committees.

6 COMMISSIONER ADAMS: Sounds good.

7 CHAIR CANTU: Any other agenda items
8 for today?

9 (No response.)

10 All right. So, we will now vote to
11 approve the agenda, as amended to include a vote
12 on the two nominees to represent the Commission
13 on the U.S. Election Assistance Commission.

14 All those in favor say aye, please.

15 (Chorus of ayes.)

16 COMMISSIONER KLADNEY: Madam Chair?
17 Madam Chair, is it to include the items that I
18 discussed?

19 CHAIR CANTU: Yes. Yes.

20 COMMISSIONER KLADNEY: Okay. Thank
21 you.

22 CHAIR CANTU: What was raised in
23 discussion is relevant and there's no need to
24 decouple. So, your items can be discussed at the
25 same time as the vote.

1 COMMISSIONER KLADNEY: Thank you,
2 Madam Chair.

3 CHAIR CANTU: Thank you, Commissioner
4 Kladney.

5 All in favor, aye, please.

6 (Chorus of ayes.)

7 Any opposed?

8 (No response.)

9 Any abstaining?

10 (No response.)

11 The motion carries.

12 Thank you very much.

13 II. BUSINESS MEETING

14 A. PRESENTATIONS FROM ADVISORY COMMITTEES TO
15 THE COMMISSION ON RECENT REPORTS/MEMOS/RELEASES

16 CHAIR CANTU: For our first order of
17 business, we have presentations from advisory
18 committees to the U.S. Commission on their recent
19 reports and memos.

20 ù MAINE ADVISORY COMMITTEE ON HATE CRIMES

21 CHAIR CANTU: First, we will hear from
22 our Maine State Advisory Committee Chair, Diane
23 Khiel.

24 Committee Chair Khiel, is that
25 correctly pronounced?

1 MS. KHIEL: It's Khiel.

2 CHAIR CANTU: Khiel. Thank you.

3 MS. KHIEL: Khiel, as on a --

4 CHAIR CANTU: Chair Khiel will present
5 on the Committee's Released Memorandum on Hate
6 Crimes.

7 And I'm taking 10 minutes of our
8 agenda just for you, Chair. So, please proceed.

9 MS. KHIEL: Very good. Thank you.

10 Good afternoon, Chair and
11 Commissioners. Thank you for inviting me to
12 present highlights from the Advisory Committee on
13 Hate Crimes in Maine.

14 On July 12th, 2019, two years ago, our
15 Committee held a briefing on hate crimes in
16 Maine, asking advocates and law enforcement
17 whether hate crimes were affecting their
18 communities. We asked whether they were seeing
19 trends in hate-motivated incidents, and most
20 importantly, whether Maine has adequate legal
21 protections against them.

22 Our Advisory Memorandum provides an
23 overview of the briefing and the Committee's
24 assertions and themes, including, sadly, reports
25 about the disturbing rise of extremist propaganda

1 and the prevalence of hate crimes on college
2 campuses.

3 Today, I'd like to focus on three
4 points brought to light that may have wider
5 application for other state committees:

6 First, the advantages of Maine's two-
7 track legal system for punishing offenders and
8 protecting victims.

9 Second, the problems identified as
10 barriers to determining a true measure of hate
11 crimes in every state.

12 And third, the availability of hate
13 crime data in each state annual crime report.

14 Our Committee learned that Maine had
15 the unique legal framework for addressing bias-
16 motivated conduct. Actions can be brought on
17 parallel civil and criminal tracks, and sometimes
18 on both simultaneously for the same conduct.
19 Each track serves a distinct purpose.

20 On the civil track, the Maine Attorney
21 General's Office or a private party can bring a
22 civil action to enjoin certain bias-motivated
23 conduct under the Maine Civil Rights Act. This
24 means that they can ask a judge to prohibit an
25 offender from repeating any conduct that

1 intentionally interfered with, or attempted to
2 intentionally interfere with, by physical force
3 or violence against a person, damage or
4 destruction to property, or trespass on a
5 property, or threaten to do any of the above, if
6 that offender's motivation was based on the race,
7 color, religion, ancestry, national origin,
8 gender, physical or mental disability, or sexual
9 orientation of the victim.

10 Such an injunction may prohibit
11 conduct in the future by the offender against the
12 original victim or against any future victim, and
13 can prohibit the offender from being in the
14 vicinity of a specific place or in the vicinity
15 of a named victim or group. If the offender then
16 violates the court order, he or she has committed
17 a Class B crime.

18 As of March 2019, there were nearly
19 300 such injunctions in full effect in Maine,
20 with only nine criminal prosecutions for
21 violations of the orders. The orders can be made
22 to last indefinitely and apply to the offender as
23 long as he or she is in Maine. The orders may
24 include a civil monetary penalty.

25 On a parallel track or separately,

1 charges may be brought by any of the 16 County
2 District Attorneys under Maine's Criminal Code
3 for bias-motivated crime. Even though Maine has
4 no specific hate crimes statute, a Maine
5 prosecutor at our briefing maintained that this
6 actually gives her more flexibility to prosecute
7 hate-motivated crimes. As long as she can prove
8 the elements of an underlying crime under Maine's
9 Criminal Code, such as assault, murder, or arson,
10 she can still present evidence of a defendant's
11 motivation in committing the crime and his
12 specific actions toward the victim without having
13 to prove motivation beyond a reasonable doubt.

14 Later in the case, she'll argue, under
15 Maine's sentencing enhancement law, that the
16 defendant's choice of victim was based on race,
17 color, religion, sex, ancestry, national origin,
18 physical or mental disability, sexual
19 orientation, or homelessness of that person,
20 thereby addressing the hate-motivated conduct.
21 She also has a separate, broader criminal that
22 she could add of a misdemeanor charge, which
23 addresses a defendant's intentional interference
24 with an individual's civil and constitutional
25 rights.

1 In terms of the logistics of
2 coordinating her criminal actions with a civil
3 injunction by the Maine Attorney General's
4 Office, this prosecutor told us that she had
5 brought current criminal charges against all of
6 the individuals against whom the Maine AG had
7 initiated civil orders between 2010 and 2018.

8 In her view, the two systems in Maine,
9 civil and criminal, complement each other well.
10 The Anti-defamation League did suggest
11 improvements to Maine's laws, which we included
12 in the memorandum.

13 A hate crime committed in Maine may
14 also be charged in federal court for a violation
15 of the Matthew Shepherd and James Bird, Jr., Hate
16 Crimes Prevention Act. In April 2019, federal
17 prosecutors brought their first case in Maine
18 under the then-10-year-old federal statute, when
19 two men -- two white men, that is -- beat two
20 black men in separate incidents an hour apart
21 outside of a Portland street and outside of a
22 Biddeford bar, both breaking the victims' jaws.
23 In those cases, all three agencies' avenues of
24 attack were pursued -- state civil, state
25 criminal, and federal criminal.

1 Next, some of our findings are likely
2 applicable to all regions of the country in the
3 prosecution of hate crimes. That is, the
4 prosecution of hate crimes can only take place if
5 victims are willing to report them and if police
6 officers are properly trained to recognize them.

7 It is widely suspected that the dearth
8 of hate crime reports is due to their
9 underreporting by affected communities for
10 various reasons. There are numerous systemic and
11 cultural barriers that prevent people from
12 reporting hate crimes. Immigrants may be
13 reluctant to draw attention to themselves for
14 fear of jeopardizing their status in the United
15 States. Many other minority groups lack trust in
16 law enforcement. The LGBTQ community is,
17 likewise, prone to underreporting.

18 A very troubling 2016 national
19 transgender survey indicated that responses from
20 Maine revealed that their highest level of
21 mistreatment was actually by the police, with 62
22 percent of transgender respondents experiencing
23 some type of mistreatment by police.
24 Appallingly, this has culminated in 59 percent of
25 the transgender community stating that they would

1 feel uncomfortable asking the police for help, if
2 they needed it. As a solution to underreporting
3 due to lack of trust, it was suggested that there
4 should be partnering between community
5 organizations and law enforcement to open lines
6 of communication and to build trust.

7 Maine and most states would also
8 benefit from comprehensive mandatory hate crime
9 training for all law enforcement officers. Maine
10 has done well with its broad adoption of having
11 specially trained civil rights officers in most
12 departments, but all officers require training,
13 especially with the State's changing
14 demographics.

15 As the prosecutor reported to us, the
16 impact of hate-motivated incidents on the
17 vulnerable individual victims and the community
18 to which they belong has an exponential impact
19 upon the actors involved. They have a chilling
20 effect on all similarly situated groups.

21 The last point from the briefing that
22 I'd like to emphasize today is the issuance of
23 annual state hate crime statistics. Each state
24 collects data on hate crimes as part of its
25 annual crime report. But, as we found in 2019,

1 the latest available crime report in Maine was
2 its 2017 report. As of today, 2021, the most
3 recent report available to the Maine public in
4 Maine is the State's 2019 report. So,
5 apparently, there's a two-year time lag. We
6 don't know the reasons of a lag or whether all
7 states lag in their reporting, but this delay
8 should be shortened.

9 With that said, the hate crimes
10 section of the Maine crime report contains a
11 wealth of information, and we assume that these
12 reports are available in all states. The annual
13 statistics break down hate crimes in Maine by the
14 number of incidents, victims, offenders, and
15 offenses.

16 It further lists which bias motivation
17 was involved in the crime -- race, ethnicity,
18 ancestry, religion, sexual orientation,
19 disability, gender, gender identity. And under
20 each of those, the category is further specified.
21 For example, it lists hate crimes against
22 African-Americans, Asian-Americans, American
23 Indians, Hispanics, and other groups. It
24 specifies which type of disability, mental or
25 physical, and which religion, if the hate crime

1 is religion-based.

2 The report also specifies hate crimes
3 by location. For example, did it take place in a
4 store, on a street, at a church, in an arena, or
5 on a college campus?

6 The report lists the offenders' rate.
7 The reports list which Maine law enforcement
8 agency charged the crime and what type of
9 underlying crime -- be it assault, murder, or
10 arson -- was involved.

11 And finally, they outline the type of
12 victim. Was it an individual or business,
13 governmental facility, or other groups?

14 Of course, comparison of the year-to-
15 year numbers could also reveal possible trends in
16 heavy hate crime areas or possibly indicate
17 better reporting in some areas of the state or
18 better training of law enforcement in identifying
19 hate crimes.

20 In fact, it may be time for the Maine
21 Advisory Committee to revisit hate crimes and
22 home in on these trends. The hate crime excerpt
23 for 2017 is included in our appendix.

24 Thank you very much for this
25 opportunity today,

1 CHAIR CANTU: Thank you, Chair Khiel.
2 You were exactly at 10 minutes, and your report
3 was very enlightening.

4 I am reminded of the late William
5 Powers, a law professor who said that, "Trust is
6 earned by the thimbleful and sometimes lost by
7 the bucketful."

8 So, you are quite apt in defining some
9 of the major problems and significant problems
10 that require daily attention, rather than every
11 two years' attention.

12 MS. KHIEL: Thank you.

13 CHAIR CANTU: Do any of the
14 Commissioners have questions of Chair Khiel?

15 (No response.)

16 It sounds as if the report was useful
17 for us, and I don't believe that folks have
18 questions. So, if there's no further questions,
19 thank you, Chair Khiel, and we'll move on to the
20 next item on the agenda. Your service, Chair
21 Khiel, and your leadership on the Maine State
22 Advisory Committee is exemplary. And thank you
23 so very much for taking time to speak with us
24 today.

25 MS. KHIEL: You're very welcome.

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CHAIR CANTU: Thank you.

ù UTAH ADVISORY COMMITTEE ON
THE GENDER WAGE GAP

CHAIR CANTU: Our next presentation is from Utah State Advisory Committee Member Carolina Nunez on the Committee's released report on the gender wage gap.

And I was able to pronounce Nunez correctly because I have cousins in Seattle who are Nunez.

MS. NUNEZ: You got it exactly right. Thank you.

CHAIR CANTU: Thank you.

Chair Nunez, would you please also address us? And you also have 10 minutes.

MS. NUNEZ: Absolutely.

Chair Cantu and Commissioners, it's a pleasure to be with you today. As Chair Cantu said, my name is Carolina Nunez, and I am the Vice Chair of the Utah Advisory Committee.

Over the three years, our Committee has studied the gender wage gap, and I'm pleased to report our findings and recommendations to you.

In 2019, a few weeks after a Utah

1 newspaper reported that, according to U.S. Census
2 Bureau data, Utah has the second-worst gender
3 wage gap, our Advisory Committee voted
4 unanimously to take up this topic as the subject
5 of our report.

6 While the gender wage gap is always of
7 concern, the topic was particularly ripe for
8 examination at that time. Our Committee had
9 issued previously a report on employment
10 discrimination in Utah back in 1997, and the U.S.
11 was about to celebrate the 100th anniversary of
12 the 19th Amendment, which guaranteed women the
13 right to vote.

14 Given that Utah was one of the first
15 states to grant women the right to vote well
16 before the 19th Amendment, and given our
17 Committee's earlier inquiry to employment
18 discrimination, the significant gender wage gap
19 in Utah merited, and continues to merit,
20 addressing.

21 The Committee organized a series of
22 five panel discussions, as part of public
23 meetings that we held in Salt Lake City, and we
24 heard from experts and stakeholders. And based
25 on this testimony, we issued a report. And

1 hopefully, you've had a chance to look at it.
2 Today, I want to walk you through some
3 highlights, really take a high-level overview,
4 and, of course, I'd be happy to answer questions
5 that you have.

6 First, let me provide some data on the
7 size of the gender wage gap in Utah, as compared
8 to the gender wage gap across the United States.
9 In Utah, women earn 73.7 percent of what men
10 earn, while, nationally, women earn 80 percent of
11 what their male counterparts earn. The gap is
12 more significant for women of color. For
13 example, black women in Utah can expect to earn
14 just 51.7 percent of what men earn, and Latino
15 women can expect to earn 47.5 percent of what men
16 earn. These gaps, again, are wider than what we
17 see nationally. This is what led us to choose
18 this particular topic for our study.

19 So, I'd like to report on our
20 Committee's findings, on some of the factors that
21 lead to the gender wage gap in Utah and which
22 inform our recommendations as well.

23 One of the biggest factors leading to
24 the gender wage gap is occupational segregation.
25 And this holds true nationally, not just in Utah.

1 Nationally, women make up nearly two-thirds of
2 workers in the 40 lowest-paying jobs, and this
3 includes jobs like being personal care aides,
4 home health aides, or jobs in the fast food
5 industry.

6 Women only make up 37 percent of
7 workers in the 40 highest-paying occupations.
8 And this disparity is even greater, if we look at
9 the very highest-paying jobs, like in business
10 management, C-suite-level officers, software
11 developers.

12 Likewise, women are more likely to
13 take part-time positions that offer lower wages
14 and fewer or no benefits at all. This is even
15 more true in Utah than in the rest of the
16 country. So, that is one factor that accounts
17 for a portion of the gender wage gap.

18 Also, in our hearings, in the
19 testimony that we heard, we heard about the
20 motherhood penalty, about women taking time out
21 of the labor force to bear and raise children,
22 which, then, locks them into lower incomes well
23 into their futures, as they're not able to catch
24 up after being out of the labor force for any
25 time.

1 We heard about a corollary, the
2 fatherhood bonus that is reported in research,
3 where high-income men in the highest-paid jobs
4 actually get pay bumps for having children. So,
5 of course, this would increase the disparity even
6 on the very same basis, having children.

7 Another factor that we heard about was
8 the effect of -- and this is tied to occupational
9 segregation -- but the effect of minimum wage or
10 subminimum wage. Because women are
11 overrepresented in lower-wage jobs, their incomes
12 are disproportionately dependent on minimum wage
13 floors. In Utah, it is currently \$7.25.

14 Another area that we heard testimony
15 about was starting salary, negotiating, and pay
16 secrecy -- a constellation, really, of factors
17 that work together in the aggregate to prevent
18 women from having the same wage parity, from
19 having wage parity with their male counterparts.

20 Women are less likely to advocate for
21 a higher salary upon hiring, and this can be
22 cultural. It can also be policy-based, in that
23 women are not in their careers likely to get
24 information from colleagues about how much they
25 are being paid. And this can be an employer

1 policy, even if it is illegal, or it can be a
2 culture that happens to exist in a place of
3 employment.

4 So, after getting hired, perhaps
5 without much negotiation, women are more likely
6 to be locked in, again, because of pay secrecy
7 that happens either on a cultural basis or on an
8 employer policy basis.

9 Another topic that we heard quite a
10 bit of testimony on was employment law
11 enforcement. There are not very many complaints,
12 relatively speaking, of -- not very many claims
13 under relevant employment laws in Utah. And
14 this, of course, means that there cannot be as
15 much enforcement as perhaps there ought to be.
16 And there was some testimony to suggest that
17 perhaps there was under-enforcement, even of
18 claims that have been raised to the relevant Utah
19 agencies or federal agencies.

20 There are other items that contribute
21 to the gender wage gap in Utah, but I would point
22 you to our report to look at those in more
23 detail. I just wanted to highlight some of the
24 ones on which we heard more testimony, some of
25 the heavier ones.

1 So, let me turn to what do we
2 recommend to begin addressing the gender wage
3 gap. And I would categorize our recommendations
4 into three buckets: awareness, enforcement, and
5 change.

6 So, I would start with awareness.
7 Many of the factors that I discuss have a
8 cultural component, where women may choose to
9 enter professions that do not have as high of
10 wages. And more awareness of what careers look
11 like may help women close that gender pay gap.

12 Likewise, awareness of employee
13 rights, more awareness of what Utah and federal
14 law prohibit, would allow for more claims, so
15 that those laws can be enforced. Also, on the
16 enforcement, we would recommend more vigilant
17 enforcement of existing employment-related laws,
18 both on the state and the federal level.

19 But we also have some recommendations
20 for change.

21 Change includes recommendation of
22 laws, both federally and in the state, barring
23 policies of pay secrecy; also, laws prohibiting
24 employers from forbidding employees from
25 discussing their salaries; also, passage of laws

1 forbidding employers from relying on salary
2 history of a prospective employee, which we heard
3 does happen, and, of course, reinforces lower
4 wages and the wage gap that we see.

5 We also have recommendations for
6 raising the minimum wages, whether at state or
7 federal level, or ideally, both. With so many
8 women relying on minimum wage, this would do
9 quite a bit to close some of the gender pay gap.

10 Also, we recommend for employers to
11 conduct a pay equity audit in their own
12 organizations. One of the difficulties is the
13 lack of more granular data to understand exactly
14 what is going on, and having more data gathering
15 would help us address the issue by formulating
16 more relevant solutions.

17 And also, encouraging employers to
18 provide training on implicit bias for management
19 and human resources. Because while we can
20 explain some of the gender pay gap by
21 occupational segregation, it does not fully
22 explain it. There is also pay differences, even
23 within those occupations, between men and women.
24 So, there is something more than self-selection
25 going on, and we may need to address that with

1 more training and, again, the gathering of more
2 data.

3 That is all I have for you today. I
4 appreciate your willingness to listen to me
5 describe our report. I'm happy to answer
6 questions, but also happy to rely on the report,
7 as written, if you do not have any.

8 CHAIR CANTU: Thank you, Chair Nunez.
9 You actually used nine minutes. So, we do have
10 time for questions.

11 Would any of the Commissioners like to
12 ask anything to Chair Nunez?

13 COMMISSIONER KLADNEY: Madam Chair,
14 this is Commissioner Kladney.

15 CHAIR CANTU: Yes, sir.

16 COMMISSIONER KLADNEY: I just have one
17 question, actually. Is it really a thing that
18 employers give increases to employees when they
19 have children?

20 MS. NUNEZ: This is the testimony that
21 we heard. And so, I think the notion is that
22 someone may go into a supervisor's office and
23 say, "Oh, you know, I've just had children and,
24 you know, we have more expenses." And when
25 you're in a high-paying job and not taking

1 parental leave, you are actually more likely to
2 get that. This is the testimony we heard. Of
3 course, I have no firsthand knowledge.

4 COMMISSIONER KLADNEY: Thank you.

5 CHAIR CANTU: Could you add more --

6 COMMISSIONER YAKI: Commissioner Yaki.

7 CHAIR CANTU: Oh, yes, Yaki. Yes,
8 Commissioner Yaki, please.

9 COMMISSIONER YAKI: Yes, thank you
10 very much, and thank you for that report, Madam
11 Chair.

12 I was sort of struck by your
13 references to pay secrecy. Can you elaborate a
14 little bit more on that?

15 MS. NUNEZ: Yes, pay secrecy can take
16 many forms, but I think the broad definition is a
17 policy -- or it could just be a culture -- of not
18 discussing salary within an organization. So,
19 you can imagine a company that forbids its
20 employees from telling each other what their
21 salaries are. And, of course, this leaves all of
22 the employees with little to no information about
23 whether they are being paid fairly at all.

24 And there are laws --

25 COMMISSIONER YAKI: Well, what are the

1 penalties for disclosure? If you're out, you
2 know, with someone and you just sort of casually
3 mention, and then, you find out, oh, my God, this
4 person is getting paid twice as much as I do for
5 the same work that I do, but he's a man and I'm a
6 woman. I mean, are there actual penalties that
7 employers can impose for breaching that secrecy
8 policy?

9 MS. NUNEZ: There are many instances
10 of having that secrecy policy. It depends on
11 exactly which law applies and the size of the
12 organization. In many instances, that would
13 actually be illegal to do, but employers are
14 doing it, nonetheless. And so, this is
15 speculation; my question is that employers may
16 actually know it's illegal and will not impose a
17 strict penalty. But there may be some kind of
18 retaliatory measure.

19 I have actually worked here in Utah at
20 an organization that prohibited discussing salary
21 among employees. I don't know what the penalty
22 was, if any, for that.

23 COMMISSIONER YAKI: Thank you.
24 Fascinating.

25 CHAIR CANTU: Anyone else, please?

1 (No response.)

2 Chair Nunez, can you speak about the
3 pandemic? There have been some reports of women
4 taking more leave because of caring for
5 dependents. And was the study, it was close to
6 completion before many of these reports came out.
7 Was there any testimony that you recall about the
8 effect of the COVID-19 pandemic?

9 MS. NUNEZ: Unfortunately, this was
10 complete. Our hearing was complete and the
11 report, actually, essentially, drafted by the
12 time that the pandemic sort of shocked us all.

13 But, yes, you are right that this
14 would be another factor to consider, and it could
15 be considered more generally, not this particular
16 pandemic, but perhaps the burden that women bear
17 when there are disruptions in society for
18 whatever reason. So, you are absolutely right
19 that that would be another avenue of study and
20 inquiry.

21 CHAIR CANTU: Thank you for that,
22 because any downturn in the economy would have a
23 similar effect, with people readjusting their
24 budgets and not being able to afford child care
25 or babysitters. Thank you.

1 MS. NUNEZ: I agree, and I think we
2 see that data nationally, and I do not think Utah
3 is an exception.

4 CHAIR CANTU: We appreciate your
5 report. It's very thorough, and I really do want
6 to congratulate you and the other members of your
7 Committee for the hard work you have done. So,
8 thank you very much.

9 MS. NUNEZ: Thank you for your time.

10 CHAIR CANTU: I'm sorry, I need to
11 pause for just a second.

12 (Pause.)

13 B. DISCUSSION AND VOTE ON IOWA ADVISORY

14 COMMITTEE CHAIR APPOINTMENT

15 CHAIR CANTU: So, our next item on the
16 agenda is a discussion and vote on the
17 appointment of a Chair to the Iowa Advisory
18 Committee to the Commission.

19 So, the Commission appointed the
20 members of the Iowa State Advisory Committee
21 during our July 2021 business meeting, but we did
22 not move to the next step of designating the
23 Chair of the Iowa State Committee. So, today,
24 we're going to amend appointments by appointing a
25 Chair.

1 So, I'll start this by moving myself.
2 I will move to appoint Mr. Juan Garcia to serve
3 as Chair of the State Advisory Committee in the
4 State of Iowa. And Mr. Garcia has been reviewed
5 by the Commissioners, and he's also being
6 recommended by our Staff Director.

7 Do I have a second to this motion?

8 COMMISSIONER ADAMS: Second. Adams.

9 CHAIR CANTU: Thank you, Commissioner
10 Adams.

11 I'm going to open the floor for
12 discussion.

13 (No response.)

14 Okay. I take that as we're ready to
15 move to the next -- so, I'll call the question
16 and take a roll call vote.

17 Commissioner Adams, how do you vote?

18 COMMISSIONER ADAMS: Yes.

19 CHAIR CANTU: Commissioner Adegbile?

20 COMMISSIONER ADEGBILE: Abstain.

21 CHAIR CANTU: Abstain. Thank you,
22 sir.

23 Commissioner Gilchrist?

24 COMMISSIONER GILCHRIST: Aye.

25 CHAIR CANTU: Commissioner Heriot?

1 COMMISSIONER HERIOT: Yes.

2 CHAIR CANTU: Commissioner Kirsanow?

3 COMMISSIONER KIRSANOW: Yes.

4 CHAIR CANTU: Commissioner Kladney?

5 COMMISSIONER KLADNEY: Yes.

6 CHAIR CANTU: Commissioner Yaki?

7 COMMISSIONER YAKI: Aye.

8 CHAIR CANTU: And I vote aye.

9 The motion passes, 7 aye and 1
10 abstaining.

11 So, I will ask the Staff Director to
12 notify the Iowa folk that they have an approved
13 Chair.

14 Thank you very much, Commissioners.

15 C. DISCUSSION AND VOTE ON FLORIDA ADVISORY

16 COMMITTEE APPOINTMENTS

17 CHAIR CANTU: The next item on today's
18 agenda is discussion and vote on Florida Advisory
19 Committee appointments. As you know, the U.S.
20 Commission on Civil Rights depends on advice from
21 highly qualified persons who serve in each of our
22 50 states, plus the District of Columbia, and
23 most recently, the U.S. Virgin Islands, Puerto,
24 Northern Mariana Islands, Guam, and American
25 Samoa.

1 Our Commissioners have been discussing
2 how to move forward on this. And so, today, I
3 would move to appoint the following persons to
4 serve on Florida's State Advisory Committee. The
5 nominations, the recommendations -- and these
6 have been reviewed by our Commissioners and by
7 the Staff Director -- are as follows:

8 And by the way, this was posted
9 already, but, for the record, please bear with me
10 while I read their names. And hopefully, I will
11 pronounce all of them correctly.

12 Nadine Smith, nominated for Chair and
13 returning appointee to the Advisory Committee for
14 Florida.

15 Warren Belmar, new appointee.

16 Bradford Brown, returning appointee.

17 Charlene Taylor Hill, new appointee.

18 Thomas Newcomb Hyde, new appointee.

19 Linda Kidwell, new appointee.

20 William Mattox, new appointee.

21 Michael Morley, new appointee.

22 Sal Nuzzo, new appointee.

23 Victor Romano, returning appointee.

24 Brandon Wolf, new appointee.

25 Toufic Zakharia, returning appointee.

1 All these individuals will serve as
2 uncompensated government employees.

3 If the motion passes, the Commission
4 will authorize the Staff Director to execute the
5 appropriate paperwork.

6 Do I have a second for this motion for
7 appointees to the Florida SAC?

8 COMMISSIONER GILCHRIST: Madam Chair,
9 Gilchrist seconds.

10 CHAIR CANTU: Commissioner Gilchrist?

11 COMMISSIONER GILCHRIST: Yes,
12 Gilchrist seconds.

13 CHAIR CANTU: Thank you.

14 And I heard another voice, and then,
15 I apologize, but on the phone I do try to listen
16 very closely. Thank you.

17 So, is there further discussion?

18 (No response.)

19 So, without further discussion, I'm
20 going to call the question and take a roll call
21 vote.

22 Is someone trying to get on? I don't
23 want to cut anyone off.

24 (No response.)

25 Okay. Thank you. All right.

1 Commissioner Adams, how do you vote?

2 COMMISSIONER ADAMS: Yes.

3 CHAIR CANTU: Commissioner Adegbile?

4 COMMISSIONER ADEGBILE: Aye.

5 CHAIR CANTU: Commissioner Gilchrist?

6 COMMISSIONER GILCHRIST: Aye.

7 CHAIR CANTU: Commissioner Heriot?

8 COMMISSIONER HERIOT: Yes.

9 CHAIR CANTU: Commissioner Kirsanow?

10 COMMISSIONER KIRSANOW: Yes.

11 CHAIR CANTU: Commissioner Kladney?

12 COMMISSIONER KLADNEY: Yes.

13 CHAIR CANTU: Commissioner Yaki?

14 COMMISSIONER YAKI: Aye.

15 CHAIR CANTU: And I vote yes.

16 The motion passes unanimously, and the
17 Staff Director will contact them.

18 And I congratulate all the new
19 appointees.

20 And I'm going to express my gratitude
21 to you, Commissioners, for moving them along very
22 expeditiously.

23 D. DISCUSSION AND VOTE ON THE RELEASE OF THE
24 CIVIL RIGHTS IMPLICATIONS OF CASH BAIL

25 CHAIR CANTU: So now, our next agenda

1 item is a discussion and vote on the final draft
2 of the report, "The Civil Rights Implications of
3 Cash Bail."

4 The Commission held a briefing on the
5 topic of cash bail on February 26, 2021, where we
6 heard from subject matter experts on whether the
7 federal government involvement impacted the state
8 of money bail and what the appropriate role of
9 the federal government is to ensure the fair
10 administration of justice.

11 Thanks to the combined efforts of our
12 Office of Civil Rights Evaluation, the Office of
13 the General Counsel, the Office of the Staff
14 Director, including the Office of Administration,
15 and our U.S. Commission on Civil Rights
16 Commissioners, special assistants, and interns,
17 we are finally now ready to vote on the final
18 draft of the report.

19 To open the floor, would someone like
20 to make a motion to approve the -- to have a
21 discussion and a vote? So, would someone like to
22 have a motion to have a discussion and a vote on
23 the final draft of the report on cash bail?

24 COMMISSIONER KLADNEY: Madam Chair,
25 Commissioner Kladney. I'd like to make a motion

1 that we adopt the report that's been circulated,
2 the final report regarding cash bail.

3 CHAIR CANTU: And, Commissioner,
4 you've done yeoman's labor on this report. So,
5 it is your honor to file the motion.

6 Do I hear a second?

7 COMMISSIONER ADEGBILE: Adegbile
8 seconds.

9 CHAIR CANTU: Thank you, Commissioner
10 Adegbile.

11 Okay. I'm opening the floor for
12 discussion.

13 COMMISSIONER KLADNEY: Madam Chair,
14 the genesis --

15 CHAIR CANTU: Yes, Commissioner?

16 COMMISSIONER KLADNEY: -- of this
17 report began with former Chair Katherine Lhamon
18 in February of 2020. She and her Special
19 Assistant, Rukku Singla, organized and
20 coordinated this project with our staff and OCRE
21 up until the time they departed for significant
22 Administration appointments.

23 I thanked them for the high quality of
24 work completed when the project was turned over
25 to my office, and my former Special Assistant,

1 Amy Royce, who continued with the same high
2 quality of work.

3 To borrow from the Executive Summary
4 of the report, bail is probably understood as
5 the, quote, "process of releasing a defendant
6 from jail or other governmental custody with
7 conditions set to provide reasonable assurance of
8 court appearance or public safety." Close quote.

9 This is true except where the
10 defendant is accused of a heinous crime where
11 probable cause is present and no bail is set.
12 This led to a system where those of wealth had
13 the ability to post bail almost instantaneously
14 and walk out of the jailhouse to continue with
15 their life. Those without significant assets may
16 languish in the jailhouse for days or weeks, with
17 collateral consequences occurring in their lives,
18 regardless of the level of seriousness of the
19 offense.

20 Many states are now looking to reform
21 this system, but still have defendants appear in
22 court in a timely fashion and provide for public
23 safety at the same time. This report analyzes
24 the different approaches currently taken in six
25 different state jurisdictions. They all seek to

1 reform, but go about it, each in a different
2 fashion; yet, trying to achieve the same goal, a
3 constitutional and fair bail system.

4 I would like to thank the Director of
5 OCRE, Merik Xavier-Brier, and Gerald Austin
6 (phonetic) and Nick Baer (phonetic) for a great
7 job in putting this report together; at the
8 Office of General Counsel, David Gantz, Pilar
9 Vilasquez McLaughlin, and Sheryl Pozart for their
10 legal input. And I'd like to thank the Chief of
11 ASCD, Ms. Pam Dunston, for her ever-present
12 ability to produce the briefings we held on this
13 report, and our other efforts.

14 Of course, I'd again like to thank our
15 former Chair and her Special Assistant for their
16 efforts, along with my former Special Assistant,
17 Amy Royce. But I'd also like to thank my fellow
18 Commissioners, all of them, and their assistants,
19 for the work they did in providing input into
20 this high quality report.

21 Thank you all, and I hope to see your
22 support for this report with your vote.

23 Thank you, Madam Chair.

24 CHAIR CANTU: Thank you, Commissioner
25 Kladney.

1 Are there any comments or questions
2 from the Commissioners regarding the cash bail
3 report?

4 (No response.)

5 All right. I would like to express my
6 thanks as well to all the hard work that went
7 into the report. And in particular, I want to
8 compliment how clear the visual tables and graphs
9 were. You have really done a terrific job of
10 preparing something that is readable in the
11 classic hand-published, but as well as in the
12 digital format. So, I really do want to express
13 my gratitude for how clear you have been.

14 So, unless there's further discussion,
15 we can proceed to a vote.

16 COMMISSIONER GILCHRIST: Madam Chair,
17 Gilchrist here.

18 CHAIR CANTU: Yes?

19 COMMISSIONER GILCHRIST: I apologize,
20 I was trying to take my phone off mute when you
21 were asking for persons to comment. So, I
22 apologize for that.

23 CHAIR CANTU: Yes, please, sir.
24 Commissioner Gilchrist?

25 COMMISSIONER GILCHRIST: If I may,

1 Madam Chair and Fellow Commissioners, I just want
2 to share with you a perspective that I think is
3 quite fitting for this particular report.

4 I remember sitting in an auditorium at
5 Benedict College, a Historical Black College in
6 South Carolina, in the fall of 2019, when then-
7 President Trump was touting his prison reform
8 accomplishments. One of the beneficiaries of the
9 reform was a 63-year-old grandmother that I had
10 the pleasure of meeting, Alice Johnson.

11 Alice was serving a life sentence for
12 being part of a drug ring, even though she never
13 received or distributed the drugs, but was
14 convicted due to others' plea deals. She was
15 actually convicted to a life sentence.

16 I had the privilege of personally
17 meeting Ms. Johnson and found her to be a lovely
18 lady. When I was chatting with her, she
19 commented that, "Stephen, I'm an example of a
20 woman who has been given a second chance in life,
21 and there's so many others who deserve the same
22 chance."

23 I remember sharing with her that I
24 agreed with that sentiment. And she began to
25 explain a little bit more to me about what she

1 felt like that meant.

2 In the context of this report, I
3 believe the Commission certainly needs to
4 consider whether or not we balance an
5 individual's liberties versus the public safety
6 concerns of our communities all across this
7 country. As we all know, the Constitution speaks
8 of one's right to bail, the idea of innocence
9 until proven guilty, which has always been a
10 cornerstone of the democracy that we so dearly
11 treasure.

12 And so, obviously, we want to be
13 cautious and steadfast against treating charged
14 persons as convicted persons. And the idea of
15 someone remaining in jail simply because they
16 cannot afford bail seems to be more onerous on
17 the poor. And particularly, as it relates to
18 cash bail, it's been an entity that has been
19 overly used. However, we must be cautious not to
20 overcorrect and cause more harm to the very
21 vulnerable communities that we all want to
22 protect.

23 So, I believe in bail reform, just as
24 I believe in some of the prison reform and the
25 First Steps Act. And I believe that all these

1 reforms, in my opinion, are just that, reforms.
2 Prison reform just didn't let people out
3 haphazardly. Like Ms. Johnson, they actually
4 went through a process to get out. Ms. Johnson
5 paid her debt to society. President Trump at the
6 time saw the injustices and harsh sentences
7 imposed on individuals that were a lasting
8 remnant of the 1994 crime bill.

9 And so, the difference is -- and it's
10 a big difference -- is whether or not liberty and
11 freedom protections must be respected on the
12 accused differently than on the convicted. And I
13 just thought this report did a reasonable job in
14 looking at the nature of bail, its potential
15 civil rights implications, and the possibility of
16 reforms that earnestly seek to balance individual
17 liberty and community safety.

18 And so, for that, I, too, want to echo
19 Commissioner Kladney's comments to thank the
20 staff and my fellow Commissioners on their hard
21 work. And I will be voting to support the
22 publication.

23 Thank you.

24 CHAIR CANTU: Thank you for your
25 comments, Commissioner Gilchrist.

1 Would anyone else like the floor?

2 COMMISSIONER ADAMS: Madam Chair,
3 Adams.

4 CHAIR CANTU: Yes, Commissioner Adams.

5 COMMISSIONER ADAMS: Thank you very
6 much, Madam Chair.

7 I wanted to highlight one of the more
8 pleasant experiences on this report, and that is
9 the willingness of the Special Assistants and
10 staff and other Commissioners to work
11 collaboratively with all of the Commission. And
12 I think that's a really important thing for us to
13 do, is find ways to get something done from time
14 to time. And I think this report is a good
15 example of that.

16 CHAIR CANTU: Thank you, Commissioner
17 Adams.

18 Hearing from Commissioners Gilchrist
19 and Adams, I'm reminded that we are the three
20 newest members of the U.S. Commission, and this
21 is the first report that has included all three
22 of us. So, I'm very proud of the report, and I'm
23 very proud of the comments that both of you have
24 made.

25 Are there any interventions or any

1 other expressions before we call the vote?
2 (No response.)
3 Thank you.
4 Commissioner Adams, how do you vote?
5 COMMISSIONER ADAMS: Yes.
6 CHAIR CANTU: Commissioner Adegbile?
7 COMMISSIONER ADEGBILE: Aye.
8 CHAIR CANTU: Commissioner Gilchrist?
9 COMMISSIONER GILCHRIST: Aye.
10 CHAIR CANTU: Commissioner Heriot?
11 COMMISSIONER HERIOT: I'm going to
12 abstain on this.
13 CHAIR CANTU: Thank you.
14 Commissioner Kirsanow?
15 COMMISSIONER KIRSANOW: Abstain.
16 CHAIR CANTU: Thank you.
17 Commissioner Kladney?
18 COMMISSIONER KLADNEY: Yes.
19 CHAIR CANTU: Commissioner Yaki?
20 COMMISSIONER YAKI: Aye.
21 CHAIR CANTU: And I vote yes.
22 We have 7 yes, 2 abstentions, and the
23 motion passes. Thank you all.
24 COMMISSIONER KIRSANOW: Well, that
25 can't be right. You mean six.

1 CHAIR CANTU: I'm sorry, you're right,
2 6 yes. Thank you for my math; thank you for
3 that.

4 (Laughter.)

5 I can always count on my colleagues to
6 help me out here.

7 Six yes and 2 abstentions should total
8 8. Thank you.

9 E. DISCUSSION AND VOTE ON THE U.S. COMMISSION
10 ON CIVIL RIGHTS APPOINTMENTS TO THE U.S.

11 ELECTION ASSISTANCE COMMISSION

12 CHAIR CANTU: So, we're now turning to
13 our fifth item, which is a discussion and vote on
14 the U.S. Commission on Civil Rights appointments
15 to the U.S. Election Assistance Commission.

16 So, do we want to have some more --
17 let's have a motion before we can have further
18 discussion.

19 COMMISSIONER ADAMS: Madam Chair?

20 CHAIR CANTU: So, Commissioner Adams,
21 do you have some language, please? Yes?

22 COMMISSIONER ADAMS: I do. We have
23 already moved to amend the agenda, and the motion
24 to amend contained the language to move to take
25 up the designations of representatives of the

1 Commission to the Board of Advisors of the United
2 States Election Assistance Commission, in
3 conformance with the AI agreed upon at our April
4 business meeting, and including the names
5 exchanged by the Commissioners in conformance
6 with that AI.

7 So moved.

8 CHAIR CANTU: And is there a second?

9 COMMISSIONER KIRSANOW: Kirsanow,
10 second.

11 CHAIR CANTU: I'm sorry, I didn't hear
12 who seconded.

13 COMMISSIONER KLADNEY: Madam Chair?

14 CHAIR CANTU: Who is speaking?

15 COMMISSIONER KLADNEY: That was
16 Kladney. I think Kirsanow now seconded.

17 COMMISSIONER KIRSANOW: Kirsanow
18 seconded. I think Kladney is now speaking.

19 COMMISSIONER KLADNEY: Yes.

20 CHAIR CANTU: Okay.

21 COMMISSIONER KLADNEY: I'm sorry.

22 CHAIR CANTU: All right. We have a
23 second.

24 Is there a procedural issue,
25 Commissioner Kladney?

1 COMMISSIONER KLADNEY: I thought that
2 the motion also included us working on an AI,
3 language of an AI, regarding reports back to us
4 and regarding the proposals; anything going on at
5 the EAC, proposals made by our appointees; making
6 sure that they cannot speak for the Commission or
7 use Commission resources.

8 And I was wondering -- I guess I'd
9 have to ask the General Counsel -- is removal
10 from the EAC of our appointee in the EAC hands or
11 our hands? And what grounds would that be?

12 That was part of the motion, I
13 believe.

14 CHAIR CANTU: So, Commissioner Adams,
15 I'm going to suggest that we try something here.
16 If there are so many questions that this will
17 result in a very prolonged discussion, would you
18 like to consider setting a time limit as to how
19 long the discussion would be, and then, maybe
20 push the AI to a discussion very, very soon after
21 this meeting?

22 COMMISSIONER ADAMS: Right, I would
23 consider it --

24 CHAIR CANTU: Yes, sir, I'd like to
25 hear from you first because you made the motion,

1 but I'd also like to hear from Commissioner
2 Kladney on my suggestion that we give ourselves a
3 set amount of time today.

4 COMMISSIONER ADAMS: Right, and I
5 think you called my name, Adams. So, can I
6 respond?

7 CHAIR CANTU: Yes, please.

8 COMMISSIONER ADAMS: I would consider
9 it to be a friendly amendment to my motion to
10 incorporate an AI that resolves those issues that
11 Commissioner Kladney discussed -- mainly, term
12 and reporting back, which were the two that I
13 think were identified -- in the same fashion that
14 we reached agreement on the AIs in April. And I
15 would consider that, proceeding as I just
16 outlined, to be a friendly amendment to my
17 motion, and therefore, incorporated.

18 CHAIR CANTU: I believe you are quite
19 accurate. So, bearing in mind that both
20 discussions are going to take place because it's
21 now incorporated in the same motion.

22 So, I will open the floor for
23 discussion. Commissioner Adams, do you have more
24 you want to elaborate before other people ask
25 questions?

1 COMMISSIONER ADAMS: Right. It's very
2 simple. Thank you.

3 It's very simple. We agreed on
4 something in April. It's now four months later.
5 We've done exactly what we agreed to do. It's
6 time to move the process along and designate
7 Commissioner Michael Yaki and Cleta Mitchell to
8 the Board of Advisors to the Elections Assistance
9 Commission.

10 As far as their term goes, we
11 obviously have the power over that. The
12 Elections Assistance Commission says when the
13 terms are up. They've done that with the
14 previous two Commissioners.

15 I'm quite certain that we will get a
16 copious amount of reporting back. I'm sure
17 Commissioner Yaki would keep us apprised. I have
18 confidence in that. And I'm sure the other
19 designee would keep is apprised. And therefore,
20 I would urge the adoption, or I should say, the
21 selection of these individuals to the Board of
22 Advisors.

23 That's all I have.

24 CHAIR CANTU: Thank you.

25 I'm opening the floor.

1 COMMISSIONER KLADNEY: Madam Chair,
2 Commissioner Kladney.

3 CHAIR CANTU: Yes, sir, Commissioner.

4 COMMISSIONER KLADNEY: I guess I don't
5 have any objection to moving these nominations
6 forward, conditioned upon an AI speaking to those
7 issues that I brought up. Otherwise, absent
8 that, I would say that we should have a time
9 limit to address an AI. I don't think it's that
10 difficult. So, that would be my proposal. I
11 mean, it's better than trying to draft one right
12 here right now.

13 CHAIR CANTU: Exactly. Exactly.

14 COMMISSIONER KLADNEY: So, if these
15 nominations can be made conditionally upon us
16 reaching an agreement on an AI within 30 days or
17 45 days, whichever time limit someone would want,
18 I would be in concurrence. Absent making these
19 appointments conditional, I would say that we
20 should draft the AI first, and then, come back
21 and vote again.

22 COMMISSIONER ADAMS: Madam Chair,
23 Adams.

24 CHAIR CANTU: Yes, Commissioner Adams?

25 COMMISSIONER ADAMS: May I ask a

1 question, Commissioner Kladney? Why didn't we
2 address these issues in our February, March, and
3 April discussions and vote at the business
4 meeting in April on that limiting factor or those
5 limiting principles?

6 COMMISSIONER KLADNEY: I just thought
7 about it the other day. I'm going, we're
8 appointing outside people from the Commission to
9 a body over which we have not made any
10 requirements in regards to telling us what's
11 going on. And I think the fact that they are
12 from outside the Commission itself is a relevant
13 fact.

14 COMMISSIONER ADAMS: Well, isn't it
15 true, Commissioner Kladney, that we --

16 COMMISSIONER KLADNEY: But I
17 apologize, Commissioner Adams, for not thinking
18 about it sooner.

19 COMMISSIONER ADAMS: But isn't it true
20 that we envisioned someone from outside the
21 Commission explicitly when we voted in April?

22 COMMISSIONER KLADNEY: Yes, but my
23 mind doesn't work that fast.

24 COMMISSIONER ADAMS: Well, then,
25 Commissioner Kladney, I think you have a good

1 idea and I consider it to be a friendly amendment
2 to adopt an AI sometime in the next month. Work
3 on it; adopt it next month. But I do not agree
4 that it's a friendly amendment to make this a
5 conditional appointment.

6 COMMISSIONER KLADNEY: Well, then, I
7 ask that we vote on it, see if it passes.

8 CHAIR CANTU: We can't call the
9 question yet because we've only heard from two
10 Commissioners.

11 Are there any other Commissioners that
12 would like to take the floor?

13 MR. MORALES: Madam Chair, this is the
14 Staff Director. If I may opine, it might help.

15 CHAIR CANTU: Yes, please.

16 MR. MORALES: It's my belief that, of
17 course, the AI is valid since it pertains to
18 Commissioner functions and procedures and was
19 voted on by a majority of Commissioners. But
20 since the Commissioners wrote it, and staff
21 wasn't involved in or consulted in its creation,
22 I would leave the intent of the AI to the
23 Commissioners to decide how to proceed.

24 We did the best we could to follow up
25 on how the AI was written to move the process

1 forward, and now we're on the vote. And the vote
2 is up to Commissioners.

3 But I would also argue that all
4 Commissioners' rules and AIs apply to the persons
5 appointed as they would to Commissioners and
6 staff and members to the State Advisory
7 Committees. These new appointments to the EAC
8 don't get any more extraordinary powers and
9 authority than what's provided and granted to
10 other folks, including the State Advisory
11 Committee members.

12 And so, I would also offer that our
13 General Counsel would provide the individual who
14 is external to the Commission and being appointed
15 to the new Commission to receive an ethics
16 training, just as the State Advisory Committee
17 members receive when they're appointed, so that
18 they understand the parameters of what applies to
19 them and the extent of their authorities. And
20 that might be helpful.

21 And we could assist Commissioners, if
22 they so would like, with helping them draft an AI
23 that may provide some level of understanding that
24 Commissioner Kladney is seeking and others are
25 seeking.

1 Thank you, Madam Chair.

2 CHAIR CANTU: Thank you.

3 COMMISSIONER KLADNEY: Madam Chair,
4 it's Kladney again.

5 CHAIR CANTU: Yes, just for
6 information, there already are requirements from
7 the U.S. Election Assistance Commission, and the
8 AI would only address any new requirements. So,
9 I also would not support a conditional vote. I
10 think that puts a cloud on both nominees, if
11 they're conditionally approved.

12 I would, however, continue listening
13 to you folk in terms of what other comments. So,
14 with that in mind, would you proceed,
15 Commissioner Kladney?

16 COMMISSIONER KLADNEY: Yes. Can the
17 General Counsel inform us if all the rules and
18 administrative instructions of the Commission, if
19 they apply to these appointees? And if they do,
20 I think that goes a long way towards solving my
21 issues, except for a reporting requirement.

22 MR. GANZ: Hi, everyone. This is
23 David Ganz, GC.

24 So, keep in mind a couple of
25 observations I have. The Sunshine Act and the

1 Federal Advisory Committee Act are applicable to
2 the EAC Board of Advisors, and those statutes
3 require that their meetings be public, that their
4 meetings are public in the same manner in which
5 the Commissions are. So, in terms of reporting,
6 those meetings will be publicly available to the
7 Commissioners and the general public at large.

8 And with regard to sort of removal and
9 things like that, you know, this appointment and
10 who has the power to, say, remove this nominee,
11 or if the nominee goes forward, this member of
12 the EAC Board of Advisors, you know, generally,
13 the appointing authority, say -- it's not up to
14 the appointing authority to call back their
15 appointee. If the President appoints somebody to
16 the Supreme Court, he can't unilaterally -- this
17 is just a hypothetical, of course -- he can't
18 unilaterally call back that nominee after the
19 Senate confirms them. So, any removal would lie
20 with the EAC Board of Advisors.

21 And I pulled up their statute, and it
22 doesn't have -- there's a two-year term, per the
23 EAC statute. It doesn't, based on my just basic
24 research I've done right now, you know, there
25 isn't a provision for removal. This is an

1 advisory committee. So, you know, we're happy to
2 -- OGC can research the issue regarding how
3 removals are effectuated under the Federal
4 Advisory Committee Act, FACA, but I can't offer
5 anything definitive regarding removals.

6 COMMISSIONER KLADNEY: What about
7 speaking on behalf of the Commission, using
8 Commission resources, and providing reports to
9 us? Is that applicable?

10 The reports we would have to put in an
11 IA, I understand, which isn't that difficult, I
12 don't think, and I don't think Commissioner Adams
13 would object to that.

14 But, as far as all other AIs and
15 things like that regarding speaking on behalf of
16 the Commission, using Commission resources, and
17 things like that, is that applicable?

18 MR. GANZ: I mean, generally, the body
19 to which someone is being appointed is going to
20 assess the rules, right? So, if the EAC has
21 certain rules regarding how they publish their
22 meeting notes or findings, and such, right, if we
23 issue an AI that conflicts with that -- and we
24 don't know, obviously, what those are because
25 it's their FACA; it's their Advisory Committee,

1 right? -- that would be problematic. So,
2 generally, when someone's being appointed to be a
3 member of some other agency's body, they need to
4 function within that body's rules, rather than
5 whatever rules we want to set for them.

6 COMMISSIONER KLADNEY: I understand
7 that, but I'm trying to get the idea of whether
8 these appointees can speak on behalf of the
9 Commission for Civil Rights.

10 COMMISSIONER YAKI: Can I answer? Can
11 I answer? This is Commissioner Yaki.

12 I believe that I'm an appointee of the
13 United States Commission on Civil Rights, but
14 this is as far as it goes. When I am there, I
15 attempt to represent the interests to the extent
16 that, if there is a position by the Commission on
17 an issue that is referred to the EAC, I will
18 bring it up. Generally, there is not. This is a
19 very technical body that deals with issues of
20 voting, as you know, Commissioner Kladney, voting
21 machines, the Help America Vote Act, but, for the
22 most part, it is drawing upon our expertise that
23 we've developed as Commissioners that we bring to
24 the body.

25 But I would, because I am constrained,

1 as we all are, in not being able to speak on
2 behalf of the Commission because that is the
3 purview of the Chair; I think, similarly, it
4 would be very unlikely that -- I think it's
5 probably within our general statute, and even as
6 a parallel to the State Advisory Committees, that
7 they cannot speak on behalf of the Commission.
8 Certainly, I do not and never have.

9 COMMISSIONER KLADNEY: I understand
10 that, Commissioner Yaki. What my question is, is
11 an outside person, are they bound by that rule?
12 And that's what I'm asking the General Counsel.

13 If they're treated as an appointee
14 similar to a State Advisory Commission, and they
15 are bound by that rule, that is fine. But we
16 have no AI saying that.

17 MR. GANZ: Yes, I mean, I'm not sure.
18 I mean, the question is a good one, but it gets
19 into the nuances of how federal advisory
20 committees function and who the members are
21 representing. And obviously, this person doesn't
22 need to be -- the EAC appointment statute doesn't
23 require that the various agencies, including
24 ours, that they appoint internal, you know, that
25 that appointee is an employee or an SGE, a

1 Special Government Employee. So, I mean, it
2 doesn't follow that they would be speaking for
3 the Commission, given that they, you know, could
4 be from the general population and a non-
5 employee.

6 So, I mean, government ethics rules
7 have some bearing on this. They state that an
8 employee of an agency isn't its spokesman, but,
9 you know, this potential appointee could be from
10 the general population. So, I mean, I don't
11 think that any advisory committee, when there's
12 an appointee, that that advisory committee takes
13 it that they're speaking on behalf of the
14 appointing authority. It's just that --

15 COMMISSIONER KLADNEY: Well,
16 absolutely, it's not an advisory committee
17 function --

18 CHAIR CANTU: Excuse me. Excuse me.
19 Excuse me.

20 MR. GANZ: But you can look at the --

21 CHAIR CANTU: People are talking.

22 MR. GANZ: But you can look at the
23 actual language, the appointing language itself.
24 It does not say, "We are appointing a
25 representative of...." We simply are one of the

1 enumerated entities that is given the power to
2 appoint two individuals.

3 COMMISSIONER KLADNEY: Right.

4 MR. GANZ: That's my point. The point
5 is --

6 COMMISSIONER KLADNEY: Yes, I think
7 that's a good, I should say that, yes, that's a
8 good observation.

9 COMMISSIONER ADAMS: Madam Chair?
10 Madam --

11 CHAIR CANTU: Excuse me. Let me
12 remind people that it's the Chair that speaks for
13 the Commission, and I've not agreed in the AI to
14 modify the Chair's responsibility to do that.
15 So, we are not discussing modifying the Chair's
16 duties and authority in this conversation.

17 But I what do appreciate is that you
18 are trying to express to each other what our
19 expectations are, because that will make both our
20 representatives have a very clear understanding
21 of what they can and cannot do.

22 And I appreciate the legal counsel
23 advice that there already are expectations from
24 the EAC, the Election Assistance Commission. But
25 if there are any additional expectations not

1 inconsistent with what the EAC wants, this is the
2 right forum and the right place and the
3 Commissioners are the right people to have that
4 conversation.

5 But I'm wondering how much more time
6 we want to pursue the specifics of this. Does
7 someone have an intervention that would help us
8 get closer to resolving it on this meeting?

9 COMMISSIONER HERIOT: Madam Chair, I
10 just have one quick comment.

11 CHAIR CANTU: Yes. We have not heard
12 before from Commissioner Heriot. So, yes, you
13 have the floor.

14 COMMISSIONER HERIOT: It just seems to
15 me that the issue of whether or not our designees
16 will be able to speak for the Commission is a
17 pretty easy one and our current rules are already
18 enough. Either they are an agent of the
19 Commission, in which case they are bound by the
20 AI that says that the Chair, and in appropriate
21 circumstances the Staff Director, speaks for the
22 Commission, but others don't. Or, alternatively,
23 they are not an agent of the Commission, in which
24 case, you know, of course, they can't speak for
25 the Commission any more than they can speak for

1 NASA. You know, it's obvious that they're not
2 somehow our agent; then they don't have the
3 authority to speak on our behalf. So that we
4 really don't need a rule here. It's clear, they
5 can't speak on behalf of the Commission.

6 COMMISSIONER KLADNEY: Madam Chair,
7 Kladney.

8 CHAIR CANTU: Yes, Commissioner
9 Kladney?

10 COMMISSIONER KLADNEY: Thank you,
11 Commissioner Heriot.

12 The issue is whether the General
13 Counsel believes they are bound by our rules or
14 not. And I think that's how I started my
15 inquiry.

16 COMMISSIONER HERIOT: No, it's not --
17 if they're an agent, then they're bound by our
18 rules. If they're not, then they're not. But
19 it's just it's no different from any other member
20 of the public. They can't speak for the
21 Commission because, golly, gee, they're not an
22 agent of the Commission.

23 COMMISSIONER KLADNEY: Well --

24 COMMISSIONER HERIOT: We don't need to
25 bind them any more than you would bind anybody

1 else in the 330-some million people in the
2 country.

3 COMMISSIONER KLADNEY: So, it's my
4 question, are they an agent of the Commission,
5 No. 1? And No. 2, do we want them to report back
6 to us, or are they just going to be a person
7 expressing their opinion?

8 COMMISSIONER YAKI: Commissioner Yaki.
9 And by the statutory definition,
10 they're not agents. The statute --

11 COMMISSIONER ADAMS: Madam Chair --

12 COMMISSIONER YAKI: -- does not say
13 representatives of the Commission. They are
14 appointees of the Commission.

15 COMMISSIONER ADAMS: Madam Chair --

16 CHAIR CANTU: I need to start a queue.
17 I have Commissioner Adams.

18 Who's next on the queue?

19 (No response.)

20 Okay. Commissioner Adams, you have
21 the floor.

22 COMMISSIONER ADAMS: Very quickly,
23 Commissioner Yaki is exactly right. The wide
24 variety of other government entities designate
25 individuals to serve on this Board of Advisors.

1 The Justice Department does. They're just people
2 who go as appointed people to go provide their
3 expertise. They don't represent anybody.
4 There's a wide variety of other entities that are
5 doing this that Commissioner Yaki has been
6 working with. He's exactly right; they're not an
7 agent of the Commission.

8 CHAIR CANTU: And I believe the
9 language you used in your motion was we were
10 designating folk rather than choosing
11 representatives.

12 COMMISSIONER ADAMS: Right.

13 COMMISSIONER HERIOT: Madam Chair?

14 CHAIR CANTU: Yes, Commissioner
15 Heriot.

16 COMMISSIONER HERIOT: Another just
17 quick comment. I know that some people are
18 concerned about the fact that one of the persons
19 on the list here is not a Commissioner and
20 thought that was especially worrisome. But, you
21 know, if that's especially worrisome, you can
22 always change your mind.

23 CHAIR CANTU: I would like to move
24 forward. So, no backsies?

25 (No response.)

1 In the spirit of moving forward, do we
2 have other comments with regards to describing
3 the type of duties and responsibilities? We've
4 heard from our General Counsel that the EAC
5 already has described it to some detail.

6 (No response.)

7 Commissioner Adams, do you want to
8 restate your motion, so that we --

9 MR. GANZ: Madam --

10 CHAIR CANTU: Yes?

11 MR. GANZ: Pardon me, Chair Cantu.

12 I'm looking at, actually, the Charter
13 for the EAC Board of Advisors, and it notes that
14 they are going to keep their records, pursuant to
15 FACA, and publish their minutes, and such. So, I
16 mean, these are public meetings. So, there's not
17 really, in my view, a need for them to report
18 back because everything's going to be publicly
19 available.

20 CHAIR CANTU: And I have gone online
21 and listened to the most recent meeting, and I
22 saw Commissioner Yaki chair the meeting. And I
23 felt that I could have served, but I think the
24 folk are pushing for more of a conversation, like
25 a consultation. Is that where people are going

1 in terms of wanting to hear back? Or do they
2 just want to watch the meeting?

3 COMMISSIONER HERIOT: I think it would
4 be nice to have reports back.

5 CHAIR CANTU: Would Commissioner Adams
6 consider that, I mean, some of your language that
7 you and I checked in with each other, that no
8 later than 30 days after each meeting, we shall
9 hear, have a brief, one- or two-page written
10 report from each of our designees to the EAC?
11 Commissioner Adams --

12 COMMISSIONER ADAMS: I think that
13 would be a great --

14 CHAIR CANTU: -- does that meet your
15 interests?

16 COMMISSIONER ADAMS: I think that
17 would be a great amendment.

18 CHAIR CANTU: Commissioner Kladney,
19 would that meet your interests?

20 COMMISSIONER KLADNEY: Whatever. That
21 would be fine.

22 CHAIR CANTU: Thank you.

23 Any other Commissioners have something
24 similar to that or any other comments to that?

25 COMMISSIONER YAKI: This is

1 Commissioner Yaki.

2 I would just note that the EAC -- and
3 for the life of me, I've never heard the word
4 "EACK" (phonetic) in five years on the Board of
5 Advisors --

6 (Laughter.)

7 CHAIR CANTU: Okay. E-A-C. Thank
8 you. Thank you.

9 COMMISSIONER YAKI: The Board of
10 Advisors has one annual meeting and three
11 quarterly briefings on the phone. Within a week
12 or two weeks after each of those quarterly
13 briefings, there is a summary of the minutes
14 distributed to the membership, especially if we
15 take up items that are discussed and voted upon
16 during that time.

17 So, I would say let's make it
18 reasonable and say 30 days, not a week, because
19 there are a lot of people on that and a lot of
20 words get spoken. And then, most of them are not
21 familiar with parliamentary procedure. So, it
22 can get a little wild. But it all gets distilled
23 down into a summary within two weeks. So, a 30-
24 day report would be more manageable, because then
25 they would have the ability to review the minutes

1 as well and attach them as an exhibit to whatever
2 report came up.

3 CHAIR CANTU: Thank you, Commissioner
4 Yaki.

5 Are we ready to vote?

6 (No response.)

7 Do we all know what we're voting on?

8 COMMISSIONER HERIOT: Can we restate
9 the motion?

10 CHAIR CANTU: Commissioner Adams, do
11 you want to take a tact at it or should I?

12 COMMISSIONER ADAMS: Well, let me tell
13 you what I've written down.

14 To put forward the designation of
15 representatives of the Election Assistance --
16 excuse me. Start again.

17 To move forward the designations of
18 representatives of the Civil Rights Commission to
19 the Board of Advisors of the United States
20 Election Assistance Commission, in conformance
21 with the AI agreed upon at our April business
22 meeting, and including the names exchanged in
23 conformance with that AI. And for the record,
24 that is Commissioner Michael Yaki and Mrs. Cleta
25 Mitchell. That includes reporting to the

1 Commission and adherence to all applicable
2 federal ethics rules.

3 CHAIR CANTU: Second?

4 We already had a second to that.
5 That's a restatement of the discussion. Your
6 friendly amendment, Commissioner Kladney, was
7 accepted.

8 I'm ready to call the question, folks.

9 All right. Call the question then.

10 Commissioner Adams, how do you vote?

11 COMMISSIONER ADAMS: Yes.

12 CHAIR CANTU: Commissioner Adegbile?

13 COMMISSIONER ADEGBILE: Aye.

14 CHAIR CANTU: Commissioner Gilchrist?

15 COMMISSIONER GILCHRIST: Yes.

16 CHAIR CANTU: Commissioner Heriot?

17 COMMISSIONER HERIOT: Yes.

18 CHAIR CANTU: Commissioner Kirsanow?

19 COMMISSIONER KIRSANOW: Yes.

20 CHAIR CANTU: Commissioner Kladney?

21 COMMISSIONER KLADNEY: No.

22 CHAIR CANTU: Thank you.

23 Commissioner Yaki?

24 COMMISSIONER YAKI: Abstain.

25 CHAIR CANTU: And I vote yes.

1 One abstention, 1 no, 6 yeses. The
2 motion passes.

3 Did I get the math right?

4 (Laughter.)

5 COMMISSIONER KIRSANOW: It sounds
6 right.

7 CHAIR CANTU: Thank you.

8 And I offer my congratulations to Mrs.
9 Mitchell and to Commissioner Yaki.

10 Very well done, folks. Today's
11 discussion really did inform what our
12 expectations are, and I appreciate that each of
13 you were able to voice and to contribute to this
14 topic.

15 We now turn to the --

16 COMMISSIONER ADEGBILE: Madam Chair?

17 CHAIR CANTU: Yes, please.

18 COMMISSIONER ADEGBILE: One point of
19 personal privilege after the Staff Director's
20 report?

21 CHAIR CANTU: Of course. Is this
22 Commissioner Yaki?

23 COMMISSIONER YAKI: Pardon?

24 COMMISSIONER ADEGBILE: Adegbile.

25 CHAIR CANTU: I am so sorry. I will

1 keep trying until I get it right.

2 Commissioner Adegbile, yes, you are
3 added for a point of privilege after the Staff
4 Director's report.

5 Thank you.

6 F. MANAGEMENT AND OPERATIONS

7 ù STAFF DIRECTOR'S REPORT

8 CHAIR CANTU: We'll now turn to the
9 Staff Director's report.

10 Mr. Morales?

11 MR. MORALES: Thank you, Madam Chair.

12 In the interest of time, I have
13 nothing further to add than what's already
14 contained in the report that you have. As
15 always, I'm available to speak with any
16 Commissioner about any particular piece of
17 information in the report that they wish to
18 discuss.

19 Thank you for your time, Madam Chair.

20 CHAIR CANTU: Thank you, Staff
21 Director.

22 H. DISCUSSION OF VOTE ON THE FINDINGS AND
23 RECOMMENDATIONS ON THE MATERNAL HEALTH CARE
24 REPORT

25 CHAIR CANTU: So, a point of

1 privilege, please, Commissioner Adegbile.

2 COMMISSIONER ADEGBILE: Yes, Madam
3 Chair.

4 I just wanted to return very briefly
5 to an issue that we discussed during our last
6 meeting, which involved the vote on the Findings
7 and Recs, the Findings and Recommendations,
8 associated with the Maternal Health Care Report.

9 We had a vigorous discussion at the
10 last meeting, and the vigorous discussion was
11 occasioned by certain objections that
12 Commissioner Heriot had to us calling that vote
13 at our last meeting.

14 And as part of framing Commissioner
15 Heriot's concern, one of the things that she said
16 is that she thought that there would have been a
17 notational vote on the Findings and
18 Recommendations, which never happened. And I
19 urged to Commissioner Heriot that the principal
20 reason that a notational vote never happened is
21 because, as we all know, notational votes can't
22 go forward if there's unanimity of Commissioners
23 to proceed with notational votes.

24 And it was then, and it is now, my
25 understanding that Commissioner Heriot had

1 orally, and at her direction, reiterated in
2 writing that she was not prepared to go forward
3 on a notational vote with respect to the Findings
4 and Recommendations, which is her right. She has
5 that right as a Commissioner, and we had
6 understood that that was what she had conveyed.

7 All of us will remember that the way
8 in which these votes got out of sequence is
9 because we had an unexpected federal holiday
10 declared the day before our scheduled meeting.
11 And so, we were all calibrating very quickly to
12 figure out how we could go forward with a series
13 of votes and start the timeframes running for
14 statements, and the like, associated with the
15 Maternal Health Care Report, because that report
16 is a special one, not because of its subject
17 matter, although I think the subject matter is
18 special also, but because we had designated it as
19 our statutory enforcement report. So, it's the
20 report that, by statute, we have to release in a
21 certain timeframe.

22 And there was cooperation from the
23 members of the Commission to proceed on a
24 notational on the substance of the report, on the
25 report itself, but the reason that we didn't go

1 forward and have a notational vote on the
2 Findings and Recs, which Commissioner Heriot was
3 expressing some surprise or concern about at our
4 last meeting, was for the very reason that
5 Commissioner Heriot herself had conveyed that she
6 did not consent and would not allow that to go
7 forward, which, again, I reiterate is her right
8 to do so.

9 And in that discussion, I indicated to
10 Commissioner Heriot that we had understood this
11 to be her position, that we were in possession of
12 a writing confirming that to be her position.
13 And so, we were a little surprised at the vigor
14 with which she resisted our effort to simply call
15 a vote on the Findings and Recs, included
16 language of accusing people -- and I'm not sure
17 exactly whom -- but accusing some of us of bad
18 faith or proceeding in bad faith. And I found
19 that to be surprising because, to my mind, then
20 and now, nobody was proceeding in bad faith. We
21 were just trying to get the votes done, have the
22 votes taken, and then, move on with our work,
23 which is our job and our oath.

24 And I just want to note, because it
25 was not acknowledged on the record, that the day

1 before the scheduled meeting -- so, June 17th --
2 Commissioner Heriot's Special Assistant sent a
3 writing to the Chair that was confirming a
4 conversation that Commissioner Heriot had with
5 the Chair. And the purpose of this confirmatory
6 writing was to note that Commissioner Heriot
7 supported a notational vote on the report and
8 timeline; that Commissioner Heriot supported
9 starting the clock for statements. But
10 Commissioner Heriot does not -- emphasis "in the
11 writing" -- support a notational vote on the
12 Findings and Recommendations.

13 And so, this is the entire reason that
14 we didn't proceed with a notational vote and why
15 we called it at a regular vote. Our AI says
16 that, if any Commissioner objects, that a vote
17 would have to be called at a full meeting of the
18 U.S. Commission on Civil Rights.

19 And so, all of this to me is largely
20 water under the bridge. The thing that I was
21 just puzzled about is why the language of
22 Commissioner Heriot would be introduced to accuse
23 the vote, the people trying to take the vote of
24 bad faith, when I don't think, did not observe,
25 certainly did not attend and did not see in

1 evidence anywhere bad faith on anybody's part,
2 including on her objection to a notational vote,
3 which, as I've said many times, is her right.

4 But to accuse others of it on this
5 record with the writing that we're in possession
6 of, and that I indicated existed at the time, was
7 disconcerting, and I regard it as inappropriate.
8 Commissioner Heriot and I have served for a long
9 time on this body. We disagree vigorously about
10 many different things, but we do so respectfully.
11 I am unaware of having accused her on the record
12 of bad faith, and I just wanted these facts to be
13 known and clear for the record, so that we could
14 have the avoidance of doubt about what transpired
15 and why we proceeded in the way that we did.

16 COMMISSIONER HERIOT: Madam Chair?

17 CHAIR CANTU: Yes, Commissioner,
18 please proceed.

19 COMMISSIONER HERIOT: We talked about
20 this yesterday, of course. And I'm real
21 surprised that Commissioner Adegbile would bring
22 this up at this point, particularly after the
23 email that I sent last night.

24 You know, I now better understand why
25 the Commissioner thought that I had said that I

1 would veto a notational vote back in June.
2 However, as we discussed in our telephone call
3 back in June, that is not what I did.

4 What I did -- and I think it's very
5 clear from the email that you sent to me, Madam
6 Chair, yesterday that you understood at the time.
7 You know, in the email I received from you
8 yesterday, you said that I "made it abundantly
9 clear" -- and this is a quote -- on our phone
10 call of June 17th that I" -- that is me -- "would
11 vigorously oppose the proposed findings and urge
12 the other members of the conservative caucus to
13 vote them down." That's exactly right. That's
14 what I did. And that entailed having the vote
15 and getting the other Commissioners to vote no,
16 not vetoing the notational vote.

17 Again, in that conversation we had
18 back in June, we agreed at the end of the
19 conversation that you would try to lobby members
20 to pass the Findings and Recommendations, and
21 that I would try to lobby members of the
22 Commission not to pass the Findings and
23 Recommendations. That's utterly inconsistent
24 with the notion that I was getting ready to veto
25 the notational vote.

1 I looked back at my emails over the
2 time, and indeed, I did lobby members of the
3 conservative caucus to vote no, fully expecting
4 that you were going to schedule a notational
5 vote. Yes, I would have preferred not to have
6 it, but I was not going to veto it. Given the
7 circumstances at the time, we had to move quickly
8 in order to have a report that would be ready by
9 the end of September.

10 Now it's true that my Special
11 Assistant wrote an ambiguous email, and that's
12 probably my fault. At the time that I was
13 talking to him -- and I don't even remember that
14 moment right now -- I probably didn't clarify the
15 difference.

16 But the difference is important. It
17 is one thing to vote something down; it's another
18 to stand in the way of having a vote. And never
19 did I do that, and never would I do that, given
20 the circumstances of this case.

21 We had our meeting cancelled for
22 reasons that were totally unrelated to the
23 Commission itself. The federal government
24 declared a holiday. Okay, we needed to get that
25 done. And it didn't happen.

1 I continue to regard it as absolutely
2 outrageous that we would attempt to pass Findings
3 and Recommendations after the Commissioners'
4 statement had been written and filed. That makes
5 a mockery of the 30-30-10 rule. So, I continue
6 to find that outrageous.

7 But now, unlike before, I do
8 understand why, although I think it was error to
9 believe that somehow I might be veto the
10 notational vote. The thing to do was either say,
11 "Hey, Gail, don't do that, because if we can't
12 vote on this in June, it will be too late by
13 July." You could have done that or you could
14 have just tried it. But, instead, you didn't.

15 I assumed, under the circumstances --
16 and it turns out I was right -- that they
17 wouldn't pass, and they didn't pass. But, had
18 they passed, then I would continue to be
19 absolutely irate that the 30-30-10 rule was
20 violated.

21 So, I'm happy to --

22 CHAIR CANTU: And your statements are
23 welcome because I think it clarifies there were
24 misunderstandings.

25 It requires, though, for me to say

1 that this Commission will have to work fast and
2 will have to work under challenging times. And
3 we should continue to cut each other some slack
4 and not assume any bad faith from any of our
5 colleagues. We are a group that I hope will
6 serve as a model for the country on working in a
7 bipartisan, respectful way.

8 And you told me yesterday your
9 feelings were hurt, and I told you my feelings
10 were hurt. So, going forward from this --

11 COMMISSIONER HERIOT: Yes, but, again
12 -- again -- I will object vociferously to any
13 effort to curtail the 30-30-10 rule every time.
14 So, you know, if you see a situation --

15 CHAIR CANTU: And I state --

16 COMMISSIONER HERIOT: -- where you
17 think this is coming down the pike, the best
18 thing to do is to try to deal with it in some
19 other way.

20 CHAIR CANTU: And I explained to you
21 yesterday that, had the motion passed, we still
22 would have had to follow the 30-30-10, and that
23 would have been the next step. But because we
24 moved so quickly, we never got to that. The vote
25 did fail and --

1 COMMISSIONER HERIOT: No, no.

2 CHAIR CANTU: -- there was no need to
3 go to that question.

4 COMMISSIONER HERIOT: Madam Chair, if
5 you had intended to extend the rules beyond the
6 deadline for the end of the fiscal year, which I
7 think would have been illegal, you know, you
8 should have spoken up beforehand. You know, that
9 would be an attempt to accommodate my concerns
10 over the 30-30-10 rule. And if you had wanted
11 the things to pass, you'd need to bring those up
12 ahead of time, and not to say, "But, gee, we
13 could have extended this." You couldn't have
14 extended this. We have a deadline.

15 CHAIR CANTU: And I --

16 COMMISSIONER HERIOT: That's why we
17 had to get to the agreement back in June, to
18 start the clock ticking. If it was unnecessary
19 to start the clock ticking, then we shouldn't
20 have been led to believe that it was necessary to
21 make these accommodations.

22 You know, we were trying to be
23 cooperative on our side. We were trying to be in
24 a situation where, yeah, we could get this report
25 out on time and still give Commissioners the time

1 that they need for their statements. The notion
2 that, golly, gee, you know, had we passed the
3 Findings and Recommendations, we could have
4 adjusted the schedule, if that's true, you'd want
5 to bring that up before the vote, not after.

6 CHAIR CANTU: The way we talk to each
7 other, and not make assumptions of bad faith, was
8 the reason that I permitted Commissioner Adegbile
9 to raise this issue. Because I do want to make
10 the point that mistakes will happen when people
11 are managing very large projects in a very
12 expeditious way, and those mistakes will be
13 corrected. And never will I expect that you
14 would do anything illegal or any other
15 Commissioner would do anything illegal. And I
16 would ask the same courtesy from me, to not
17 assume that I would ask the Commission to do
18 something illegal.

19 COMMISSIONER HERIOT: Don't schedule
20 votes that (audio interference) --

21 COMMISSIONER ADEGBILE: Madam Chair?

22 COMMISSIONER HERIOT: -- the 30-30-10
23 rule.

24 CHAIR CANTU: I hear your commitment
25 to the 30-30-10 rule. I share your commitment to

1 it.

2 Commissioner Adegbile?

3 COMMISSIONER ADEGBILE: So, it's been
4 a long meeting and I know people want to get on
5 with their day.

6 I just want to clarify, so that there
7 is no confusion about this. On June 17th,
8 following an oral conversation between
9 Commissioner Heriot and yourself, Commissioner
10 Heriot's Special Assistant sent a writing that
11 said, among other things, Commissioner Heriot --
12 emphasis added -- does not support a notational
13 vote on the Findings and Recommendations.

14 So, on the strength of that
15 statement --

16 COMMISSIONER HERIOT: That's not a --

17 COMMISSIONER ADEGBILE: On the --

18 COMMISSIONER HERIOT: I don't want to
19 hold up that vote. It's not that I don't --

20 COMMISSIONER ADEGBILE: Commissioner
21 Heriot, I listened to you. I listened to you. I
22 let you say everything you needed to say and I
23 waited until it came to the end, and then, I
24 began with my remarks, for lots of reasons. Not
25 only is it our custom, but it's also hard for the

1 court reporter to transcribe crosstalk. And so,
2 if you could just let me finish, I will be done
3 shortly, and then, you can retask the words that
4 we have on the page in the way that you wish.

5 But the fact remains that the writing
6 from your Special Assistant to the Chair said,
7 and I quote, among other things, "Commissioner
8 Heriot does not" -- emphasis added; italics for
9 those words -- "support a notational vote on the
10 Findings and Recommendations."

11 And in our last meeting, you said on
12 the record that you had expected that we would
13 proceed by a notational vote. And under our AI,
14 if a single Commissioner does not agree to
15 proceed by notational vote, we cannot proceed by
16 notational vote.

17 Now there's lots to say about all of
18 that. Obviously, we know that the most important
19 thing to you is the rule about the timing of the
20 issuance of statements. You've made that
21 abundantly clear. Everybody is entitled to their
22 prerogatives and their commitments to different
23 things.

24 My simple point is that whatever may
25 be said about what I was doing with respect to

1 our statutory enforcement report, having seen
2 that statement and having had it conveyed to me,
3 it was reasonable to believe that you would, in
4 fact -- that you had conveyed accurately what
5 your position was, that you were agreeing to a
6 notational vote on one thing, but not the other.
7 And under the force of our rule, that means we
8 can't have a notational vote on the Findings and
9 Recommendations.

10 So, the idea that you said in a
11 meeting that we should have done that, when you
12 had sent a writing saying that you would block us
13 doing that, just suggests to me that I'm really
14 puzzled about why you would accuse anybody of bad
15 faith on that record, written record.

16 COMMISSIONER HERIOT: Bear in mind --
17 bear in mind, Debo -- I didn't see that email
18 until yesterday. I didn't see that. That --

19 COMMISSIONER ADEGBILE: But, now that
20 you've -- oh, sorry. Sorry, sorry, sorry.
21 Sorry, Commissioner Heriot. Continue.

22 COMMISSIONER HERIOT: You know, now
23 that I have seen it, I think it's true that I
24 understand why you thought I would have vetoed
25 it. I don't think that's what Alex said, but I

1 can understand why, reading that, you would think
2 she's going to veto the notational vote, as
3 opposed to she would prefer that that notational
4 vote not occur and will vote no.

5 But, as you can see from the record
6 now, and you can look to -- I'll show you my
7 email from June; I'm lobbying people to vote no.
8 I am not trying to prevent the notational vote
9 from occurring.

10 So, at the time in July, I had not
11 seen that email and did not realize that you
12 might have been misled. But I continue to
13 believe, misled or not, it is inappropriate to
14 schedule Findings and Recommendations for a vote
15 after the Commissioners' statements are in. That
16 is, I think, making a mockery of the rule and
17 should never have been done.

18 COMMISSIONER ADEGBILE: And I would
19 just respond by saying that there is a difference
20 in life and in the Commission between something
21 being inappropriate and accusing people of bad
22 faith. And I quoted a number of times what the
23 statement said, what the writing of your SA said,
24 and there's only one way to read those words.
25 And it was reasonable, under a combination of our

1 AI and that statement that was sent to confirm a
2 conversation that you had been a party to, it was
3 reasonable for us to believe that you meant what
4 those words said, and meant it so much that you
5 wanted to emphasize it with a confirmatory
6 writing.

7 And so, whether you had seen it at
8 that time or not, the idea that you accused
9 people of bad faith, and that now having seen the
10 email, to know what our state of mind was, in
11 light of the writing that your SA sent on your
12 behalf, and are not taking down your words,
13 having accused people of bad faith will just
14 stand. That will just stand. What you said and
15 what you accused people of will stand.

16 And I understand your objection. I
17 really do. I understand the way in which you
18 value the rule with respect to statements. But I
19 regret that you would accuse people of bad faith
20 with the factual record being as it is in this
21 case, because nobody was proceeding in bad faith.

22 COMMISSIONER HERIOT: Again, let me
23 emphasize it. Putting something like that on the
24 agenda after the Commissioners' statements are in
25 is highly inappropriate. And that would have

1 been so, even if one of the members of the
2 Commission had vetoed a notational vote. You
3 know, our rules allow an individual Commissioner
4 to do that. I don't think any individual
5 Commissioner would have wanted to do that. But
6 if one of them had, it would still be highly
7 inappropriate to amend the thing after the
8 statements are in.

9 That would just be one of the things
10 that happens when you have a rule that allows one
11 Commissioner to veto a notational vote. A report
12 might have to go out without Findings and
13 Recommendations on the very, very unusual
14 circumstance of a meeting being cancelled because
15 of a declaration of a federal holiday. It is
16 inappropriate to bring something like that to a
17 vote after the statements are finished.

18 COMMISSIONER KLADNEY: Madam Chair,
19 Kladney here. I would just say --

20 CHAIR CANTU: Yes, Commissioner
21 Kladney.

22 COMMISSIONER KLADNEY: -- that
23 inappropriateness is a far cry in terms of an
24 allegation of bad faith. And I think
25 Commissioner Heriot knows that.

1 COMMISSIONER HERIOT: If you would
2 prefer, if you would prefer to maybe use "highly
3 inappropriate," I hereby change what I said
4 earlier to highly inappropriate.

5 CHAIR CANTU: I would prefer that all
6 of us refrain from language that is putting a
7 cloud over people's heads in terms of suggesting
8 that something improper, illegal, outside of our
9 bounds of reasonable conduct -- going forward, I
10 really do not want to have this discussion
11 continue where folk are accused, and then, later,
12 new language has to be put in.

13 I think we've discussed enough of it
14 today to understand thoroughly folks' positions.

15 Commissioner Adegbile, do you want to
16 persist? Or are you --

17 COMMISSIONER ADEGBILE: No, I have
18 nothing further. I just wanted the record to be
19 clear about what the facts were as we proceeded.

20 CHAIR CANTU: And I want to thank the
21 Special Assistants. They have been working as
22 hard as they can, and they have been doing their
23 best.

24 And I appreciate the Commissioner
25 owning her instructions to the assistant and the

1 responses to that.

2 The Special Assistants have been doing
3 a terrific job, as have all employees of the
4 Agency.

5 And when Commissioners talk to each
6 other, we're doing it with the notion that we are
7 a body of folk who believe we can always improve;
8 we can always do better.

9 And without pointing it out, as
10 Commissioner Adegbile did, that this is an area
11 that we cannot keep repeating, and it's not
12 productive, I think we would have missed an
13 opportunity to have this conversation.

14 So, I'm going to close the meeting
15 with an expression that I look forward to our
16 next meeting. I look forward to talking with you
17 all between now and the next meeting. And I wish
18 everyone a safe and healthy month before we have
19 our next business meeting.

20 There being no further business, this
21 meeting is concluded. Thank you, everyone.

22 (Whereupon, at 1:58 p.m., the meeting
23 was concluded.)

24

25

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Date: 08-20-21

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Court Reporter

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