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 KLASNEY, 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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PROCEDINGS

12:02 p.m.

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

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

Please go ahead, ma'am.

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

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

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

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

COMMISSIONER ADAMS: Present.

CHAIR CANTU: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

CHAIR CANTU: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Present.

CHAIR CANTU: Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

CHAIR CANTU: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIR CANTU: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

CHAIR CANTU: Commissioner Yaki?

COMMISSIONER YAKI: Yo.

CHAIR CANTU: Well, we have full attendance and a quorum of Commissioners is present.

Is the court reporter present?

MS. CRAWLEY: Yes, ma'am.

CHAIR CANTU: Thank you.

Is the Staff Director present?

MR. MORALES: I am present.

CHAIR CANTU: Thank you.

Okay. The meeting will now come to order.
I. APPROVAL OF AGENDA

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

So, do any Commissioners --

COMMISSIONER ADAMS: Madam Chairman?

CHAIR CANTU: Yes?

COMMISSIONER ADAMS: Sorry.

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

COMMISSIONER ADAMS: Yes. Sorry.

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

COMMISSIONER ADAMS: Madam Chairman, Adams.

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

COMMISSIONER ADAMS: Adams.

CHAIR CANTU: Adams. Thank you, Commissioner Adams.

COMMISSIONER ADAMS: Thank you, Madam Chairman.

I would move to amend the agenda today
to include taking up the designations of 
representatives of the Commission on Civil Rights 
to the Advisory Committee of the United States 
Election Assistance Commission, in conformance 
with the AI agreed upon at our April business 
meeting, and including the names exchanged in 
conformance with that AI. That is my motion, to 
amend the agenda to do that.

    CHAIR CANTU: Thank you.

    Do I hear a second to that proposal?

    COMMISSIONER GILCHRIST: Madam Chair, 

    Gilchrist seconds that motion.

    CHAIR CANTU: I hear a second.

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

    COMMISSIONER ADAMS: Madam Chair, 

    Adams.

    CHAIR CANTU: Yes, Commissioner Adams, 

    please speak.

    COMMISSIONER ADAMS: Yes. I made this 
motion because the Election Assistance Commission 
is waiting for our nominees and there will be 
work being done that our representatives will not
be present to assist with. And we spent a great
deal of time at our April business meeting and a
great deal of time after that to move this
process along. And my effort to amend to the
agenda is to move this process along.

    That's all I have.

CHAIR CANTU: Thank you, Commissioner.

COMMISSIONER KLANDNEY: Madam Chair,

Commissioner Klandney here.

CHAIR CANTU: Yes, Commissioner

Klandney.

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

It's my understanding that the EAC has
a two-year term of office, but I was wondering
whether the Commission would like reports from
our EAC nominees; the form in which they would be
presented: written, verbal, or both. How often
they should be provided to the Commission?
Also, letting us know what proposals they're making at the EAC; the resulting action taken on them, if any, at the EAC; how many meetings can they miss. I think the EAC has a rule of how many meetings you can miss before you're removed, but I want to make sure that the amount of meetings is okay with us.

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

And that's my input. Whether we amend the agenda and discuss that today, or form a group that can draft it. I mean, I don't think it's going to be very difficult to draft some of those things. But I think there should be some responsibility to the Commission or information given to the Commission from our EAC appointees, especially the one -- because if we have a Commissioner onboard that's in the EAC, we can ask them anytime what's going on. However, when we start nominating people outside of the Commission, we have less -- well, we don't have 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
4 CHAIR CANTU: That's relevant to the
5 discussion.
6
7 Commissioner Adams, do you have a
8 response?
9
10 COMMISSIONER ADAMS: I have a
11 question. I'm wondering, Commissioner Kladney, I
12 think you were one of the designees over the last
13 couple of years. What has been the past practice
14 of reporting back to the full Commission the
15 activities of the EAC?
16
17 COMMISSIONER KLADNEY: There actually
18 hasn't been one. When people inquire -- I'm a
19 Commissioner; Commissioner Yaki is a Commissioner
20 -- we have an obligation to give information when
21 people want to know. I know Commissioner Yaki
22 has informed the Commission from time to time as
23 to what's gone on at the EAC.
24
25 But I just think that, since we don't
26 have any connection to the outside person -- and
27 this is not -- I mean, if both people were
28 outside people, I'd be saying the same thing,
29 both sides. I just don't think we nominate a
30 person and just not know what's going on, if that
makes sense.

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

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

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

COMMISSIONER YAKI: Commissioner Yaki.

CHAIR CANTU: Yes, please,

Commissioner.

COMMISSIONER YAKI: Yes. As the longest-serving member of the Commission to the EAC, one, I have no objection to providing any
report on what's going on. I can tell you that, at the present time, there is discussion regarding the advisory role of the Board of Advisors with respect to what are called the implementation components of the Voluntary Voting Security Guidelines, VVSG 2.0, which were adopted by the Commissioners of the EAC early this year. And now, the focus is really about how do you sort of adapt it as time goes on and new information comes in, in order to deal with new guidelines and new standards that come forward.

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

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

And certainly, the new appointee will have ample opportunity to ask the current Chair,
and I would be more than willing to make any
introductions as may be necessary to the new
Chair for their interest in serving committees
and such.

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

CHAIR CANTU: Thank you.

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

Commissioner Adams, I think you're --

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

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

So, is there someone who would speak
against it?

(No response.)

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

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

COMMISSIONER ADAMS: Sounds good.

CHAIR CANTU: Any other agenda items for today?

(No response.)

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

All those in favor say aye, please.

(Chorus of ayes.)

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

CHAIR CANTU: Yes. Yes.

COMMISSIONER KLADNEY: Okay. Thank you.

CHAIR CANTU: What was raised in discussion is relevant and there's no need to decouple. So, your items can be discussed at the same time as the vote.
COMMISSIONER Kladney: Thank you, Madam Chair.

CHAIR CANTU: Thank you, Commissioner Kladney.

All in favor, aye, please.

(Chorus of ayes.)

Any opposed?

(No response.)

Any abstaining?

(No response.)

The motion carries.

Thank you very much.

II. BUSINESS MEETING

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

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

MAINE ADVISORY COMMITTEE ON HATE CRIMES

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

Committee Chair Khiel, is that correctly pronounced?
MS. KHIEL: It's Khiel.

CHAIR CANTU: Khiel. Thank you.

MS. KHIEL: Khiel, as on a --

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

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

MS. KHIEL: Very good. Thank you.

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

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

Our Advisory Memorandum provides an overview of the briefing and the Committee's assertions and themes, including, sadly, reports about the disturbing rise of extremist propaganda.
and the prevalence of hate crimes on college campuses.

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

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

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

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

Our Committee learned that Maine had the unique legal framework for addressing bias-motivated conduct. Actions can be brought on parallel civil and criminal tracks, and sometimes on both simultaneously for the same conduct.

Each track serves a distinct purpose.

On the civil track, the Maine Attorney General's Office or a private party can bring a civil action to enjoin certain bias-motivated conduct under the Maine Civil Rights Act. This means that they can ask a judge to prohibit an offender from repeating any conduct that
intentionally interfered with, or attempted to
intentionally interfere with, by physical force
or violence against a person, damage or
destruction to property, or trespass on a
property, or threaten to do any of the above, if
that offender's motivation was based on the race,
color, religion, ancestry, national origin,
gender, physical or mental disability, or sexual
orientation of the victim.

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

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

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

Later in the case, she'll argue, under
Maine's sentencing enhancement law, that the
defendant's choice of victim was based on race,
color, religion, sex, ancestry, national origin,
physical or mental disability, sexual
orientation, or homelessness of that person,
thereby addressing the hate-motivated conduct.
She also has a separate, broader criminal that
she could add of a misdemeanor charge, which
addresses a defendant's intentional interference
with an individual's civil and constitutional
rights.
In terms of the logistics of coordinating her criminal actions with a civil injunction by the Maine Attorney General's Office, this prosecutor told us that she had brought current criminal charges against all of the individuals against whom the Maine AG had initiated civil orders between 2010 and 2018.

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

A hate crime committed in Maine may also be charged in federal court for a violation of the Matthew Shepherd and James Bird, Jr., Hate Crimes Prevention Act. In April 2019, federal prosecutors brought their first case in Maine under the then-10-year-old federal statute, when two men -- two white men, that is -- beat two black men in separate incidents an hour apart outside of a Portland street and outside of a Biddeford bar, both breaking the victims' jaws. In those cases, all three agencies' avenues of attack were pursued -- state civil, state criminal, and federal criminal.
Next, some of our findings are likely applicable to all regions of the country in the prosecution of hate crimes. That is, the prosecution of hate crimes can only take place if victims are willing to report them and if police officers are properly trained to recognize them.

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

A very troubling 2016 national transgender survey indicated that responses from Maine revealed that their highest level of mistreatment was actually by the police, with 62 percent of transgender respondents experiencing some type of mistreatment by police. Appallingly, this has culminated in 59 percent of the transgender community stating that they would
feel uncomfortable asking the police for help, if they needed it. As a solution to underreporting due to lack of trust, it was suggested that there should be partnering between community organizations and law enforcement to open lines of communication and to build trust.

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

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

The last point from the briefing that I'd like to emphasize today is the issuance of annual state hate crime statistics. Each state collects data on hate crimes as part of its annual crime report. But, as we found in 2019,
the latest available crime report in Maine was its 2017 report. As of today, 2021, the most recent report available to the Maine public in Maine is the State's 2019 report. So, apparently, there's a two-year time lag. We don't know the reasons of a lag or whether all states lag in their reporting, but this delay should be shortened.

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

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

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

The report lists the offenders' rate.

The reports list which Maine law enforcement agency charged the crime and what type of underlying crime -- be it assault, murder, or arson -- was involved.

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

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

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

Thank you very much for this opportunity today,
CHAIR CANTU: Thank you, Chair Khiel.
You were exactly at 10 minutes, and your report
was very enlightening.

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

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

MS. KHIEL: Thank you.

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

(No response.)

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

MS. KHIEL: You're very welcome.
CHAIR CANTU: Thank you.

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

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

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

The Committee organized a series of
five panel discussions, as part of public
meetings that we held in Salt Lake City, and we
heard from experts and stakeholders. And based
on this testimony, we issued a report. And
hopefully, you've had a chance to look at it.

Today, I want to walk you through some
highlights, really take a high-level overview,
and, of course, I'd be happy to answer questions
that you have.

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

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

One of the biggest factors leading to
the gender wage gap is occupational segregation.
And this holds true nationally, not just in Utah.
Nationally, women make up nearly two-thirds of workers in the 40 lowest-paying jobs, and this includes jobs like being personal care aides, home health aides, or jobs in the fast food industry.

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

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

Also, in our hearings, in the testimony that we heard, we heard about the motherhood penalty, about women taking time out of the labor force to bear and raise children, which, then, locks them into lower incomes well into their futures, as they're not able to catch up after being out of the labor force for any time.
We heard about a corollary, the fatherhood bonus that is reported in research, where high-income men in the highest-paid jobs actually get pay bumps for having children. So, of course, this would increase the disparity even on the very same basis, having children.

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

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

Women are less likely to advocate for a higher salary upon hiring, and this can be cultural. It can also be policy-based, in that women are not in their careers likely to get information from colleagues about how much they are being paid. And this can be an employer
policy, even if it is illegal, or it can be a culture that happens to exist in a place of employment.

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

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

There are other items that contribute to the gender wage gap in Utah, but I would point you to our report to look at those in more detail. I just wanted to highlight some of the ones on which we heard more testimony, some of the heavier ones.
So, let me turn to what do we recommend to begin addressing the gender wage gap. And I would categorize our recommendations into three buckets: awareness, enforcement, and change.

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

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

But we also have some recommendations for change.

Change includes recommendation of laws, both federally and in the state, barring policies of pay secrecy; also, laws prohibiting employers from forbidding employees from discussing their salaries; also, passage of laws
forbidding employers from relying on salary
history of a prospective employee, which we heard
does happen, and, of course, reinforces lower
wages and the wage gap that we see.

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

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

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

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

CHAIR CANTU: Thank you, Chair Nunez.

You actually used nine minutes. So, we do have time for questions.

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

COMMISSIONER KLADNEY: Madam Chair,

this is Commissioner Kladney.

CHAIR CANTU: Yes, sir.

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

MS. NUNEZ: This is the testimony that we heard. And so, I think the notion is that someone may go into a supervisor's office and say, "Oh, you know, I've just had children and, you know, we have more expenses." And when you're in a high-paying job and not taking
parental leave, you are actually more likely to get that. This is the testimony we heard. Of course, I have no firsthand knowledge.

COMMISSIONER KLADNEY: Thank you.

CHAIR CANTU: Could you add more --

COMMISSIONER YAKI: Commissioner Yaki.

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

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

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

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

And there are laws --

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

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

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

COMMISSIONER YAKI: Thank you.

Fascinating.

CHAIR CANTU: Anyone else, please?
Chair Nunez, can you speak about the pandemic? There have been some reports of women taking more leave because of caring for dependents. And was the study, it was close to completion before many of these reports came out. Was there any testimony that you recall about the effect of the COVID-19 pandemic?

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

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

CHAIR CANTU: Thank you for that, because any downturn in the economy would have a similar effect, with people readjusting their budgets and not being able to afford child care or babysitters. Thank you.
MS. NUNEZ: I agree, and I think we see that data nationally, and I do not think Utah is an exception.

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

MS. NUNEZ: Thank you for your time.

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

(Pause.)

B. DISCUSSION AND VOTE ON IOWA ADVISORY COMMITTEE CHAIR APPOINTMENT

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

So, the Commission appointed the members of the Iowa State Advisory Committee during our July 2021 business meeting, but we did not move to the next step of designating the Chair of the Iowa State Committee. So, today, we're going to amend appointments by appointing a Chair.
So, I'll start this by moving myself. I will move to appoint Mr. Juan Garcia to serve as Chair of the State Advisory Committee in the State of Iowa. And Mr. Garcia has been reviewed by the Commissioners, and he's also being recommended by our Staff Director.

Do I have a second to this motion?


CHAIR CANTU: Thank you, Commissioner Adams.

I'm going to open the floor for discussion.

(No response.)

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

Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Abstain.

CHAIR CANTU: Abstain. Thank you, sir.

Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Aye.

CHAIR CANTU: Commissioner Heriot?
COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Commissioner Kladney?

COMMISSIONER KLADENY: Yes.

CHAIR CANTU: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR CANTU: And I vote aye.

The motion passes, 7 aye and 1 abstaining.

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

Thank you very much, Commissioners.

C. DISCUSSION AND VOTE ON FLORIDA ADVISORY COMMITTEE APPOINTMENTS

CHAIR CANTU: The next item on today's agenda is discussion and vote on Florida Advisory Committee appointments. As you know, the U.S. Commission on Civil Rights depends on advice from highly qualified persons who serve in each of our 50 states, plus the District of Columbia, and most recently, the U.S. Virgin Islands, Puerto, Northern Mariana Islands, Guam, and American Samoa.
Our Commissioners have been discussing how to move forward on this. And so, today, I would move to appoint the following persons to serve on Florida's State Advisory Committee. The nominations, the recommendations -- and these have been reviewed by our Commissioners and by the Staff Director -- are as follows:

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

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

Warren Belmar, new appointee.

Bradford Brown, returning appointee.

Charlene Taylor Hill, new appointee.

Thomas Newcomb Hyde, new appointee.

Linda Kidwell, new appointee.

William Mattox, new appointee.

Michael Morley, new appointee.

Sal Nuzzo, new appointee.

Victor Romano, returning appointee.

Brandon Wolf, new appointee.

Toufic Zakharia, returning appointee.
All these individuals will serve as uncompensated government employees.

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

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

COMMISSIONER GILCHRIST: Madam Chair, Gilchrist seconds.

CHAIR CANTU: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes, Gilchrist seconds.

CHAIR CANTU: Thank you.

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

So, is there further discussion?

(No response.)

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

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

(No response.)

Okay. Thank you. All right.
Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Aye.

CHAIR CANTU: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIR CANTU: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR CANTU: And I vote yes.

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

And I congratulate all the new appointees.

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

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

CHAIR CANTU: So now, our next agenda
item is a discussion and vote on the final draft
of the report, "The Civil Rights Implications of
Cash Bail."

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

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

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

COMMISSIONER KLANDNEY: Madam Chair,
Commissioner Kladney. I'd like to make a motion
that we adopt the report that's been circulated, the final report regarding cash bail.

CHAIR CANTU: And, Commissioner, you've done yeoman's labor on this report. So, it is your honor to file the motion. Do I hear a second?

COMMISSIONER ADEGBILE: Adegbile seconds.

CHAIR CANTU: Thank you, Commissioner Adegbile.

Okay. I'm opening the floor for discussion.

COMMISSIONER KLADNEY: Madam Chair, the genesis --

CHAIR CANTU: Yes, Commissioner? COMMISSIONER KLADNEY: -- of this report began with former Chair Katherine Lhamon in February of 2020. She and her Special Assistant, Rukku Singla, organized and coordinated this project with our staff and OCRE up until the time they departed for significant Administration appointments. I thanked them for the high quality of work completed when the project was turned over to my office, and my former Special Assistant,
Amy Royce, who continued with the same high quality of work.

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

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

Many states are now looking to reform this system, but still have defendants appear in court in a timely fashion and provide for public safety at the same time. This report analyzes the different approaches currently taken in six different state jurisdictions. They all seek to
reform, but go about it, each in a different fashion; yet, trying to achieve the same goal, a constitutional and fair bail system.

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

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

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

Thank you, Madam Chair.

CHAIR CANTU: Thank you, Commissioner Kladney.
Are there any comments or questions from the Commissioners regarding the cash bail report?

(No response.)

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

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

COMMISSIONER GILCHRIST: Madam Chair, Gilchrist here.

CHAIR CANTU: Yes?

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

CHAIR CANTU: Yes, please, sir.

Commissioner Gilchrist?

COMMISSIONER GILCHRIST: If I may,
Madam Chair and Fellow Commissioners, I just want
to share with you a perspective that I think is
quite fitting for this particular report.

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

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

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

I remember sharing with her that I
agreed with that sentiment. And she began to
explain a little bit more to me about what she
felt like that meant.

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

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

So, I believe in bail reform, just as I believe in some of the prison reform and the First Steps Act. And I believe that all these
reforms, in my opinion, are just that, reforms.  
Prison reform just didn't let people out 
haphazardly. Like Ms. Johnson, they actually 
grew through a process to get out. Ms. Johnson 
paid her debt to society. President Trump at the 
time saw the injustices and harsh sentences 
imposed on individuals that were a lasting 
remnant of the 1994 crime bill.  

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

And so, for that, I, too, want to echo 

Commissioner Kladney's comments to thank the 
staff and my fellow Commissioners on their hard 
work. And I will be voting to support the 
publication.  

Thank you.  

CHAIR CANTU: Thank you for your 

comments, Commissioner Gilchrist.
Would anyone else like the floor?

COMMISSIONER ADAMS: Madam Chair, Adams.

CHAIR CANTU: Yes, Commissioner Adams.

COMMISSIONER ADAMS: Thank you very much, Madam Chair.

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

CHAIR CANTU: Thank you, Commissioner Adams.

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

Are there any interventions or any
other expressions before we call the vote?

(No response.)

Thank you.

Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Aye.

CHAIR CANTU: Commissioner Heriot?

COMMISSIONER HERIOT: I'm going to abstain on this.

CHAIR CANTU: Thank you.

Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Abstain.

CHAIR CANTU: Thank you.

Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIR CANTU: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR CANTU: And I vote yes.

We have 7 yes, 2 abstentions, and the motion passes. Thank you all.

COMMISSIONER KIRSANOW: Well, that can't be right. You mean six.
CHAIR CANTU: I'm sorry, you're right, 6 yes. Thank you for my math; thank you for that.

(Laughter.)

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

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

E. DISCUSSION AND VOTE ON THE U.S. COMMISSION ON CIVIL RIGHTS APPOINTMENTS TO THE U.S. ELECTION ASSISTANCE COMMISSION

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

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

COMMISSIONER ADAMS: Madam Chair?

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

COMMISSIONER ADAMS: I do. We have already moved to amend the agenda, and the motion to amend contained the language to move to take up the designations of representatives of the
Commission to the Board of Advisors of the United States Election Assistance Commission, in conformance with the AI agreed upon at our April business meeting, and including the names exchanged by the Commissioners in conformance with that AI.

So moved.

CHAIR CANTU: And is there a second?

COMMISSIONER KIRSANOW: Kirsanow, second.

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

COMMISSIONER KLADNEY: Madam Chair?

CHAIR CANTU: Who is speaking?

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

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

COMMISSIONER KLADNEY: Yes.

CHAIR CANTU: Okay.

COMMISSIONER KLADNEY: I'm sorry.

CHAIR CANTU: All right. We have a second.

Is there a procedural issue,

Commissioner Kladney?
COMMISSIONER KLANDNEY: I thought that the motion also included us working on an AI, language of an AI, regarding reports back to us and regarding the proposals; anything going on at the EAC, proposals made by our appointees; making sure that they cannot speak for the Commission or use Commission resources.

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

That was part of the motion, I believe.

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

COMMISSIONER ADAMS: Right, I would consider it --

CHAIR CANTU: Yes, sir, I'd like to hear from you first because you made the motion,
but I'd also like to hear from Commissioner Kladney on my suggestion that we give ourselves a set amount of time today.

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

CHAIR CANTU: Yes, please.

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

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

So, I will open the floor for discussion. Commissioner Adams, do you have more questions?
COMMISSIONER ADAMS: Right. It's very simple. Thank you.

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

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

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

That's all I have.

CHAIR CANTU: Thank you.

I'm opening the floor.
COMMISSIONER KLANDNEY: Madam Chair, Commissioner Kladney.

CHAIR CANTU: Yes, sir, Commissioner.

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

CHAIR CANTU: Exactly. Exactly.

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

COMMISSIONER ADAMS: Madam Chair, Adams.

CHAIR CANTU: Yes, Commissioner Adams?

COMMISSIONER ADAMS: May I ask a
question, Commissioner Kladney? Why didn't we
address these issues in our February, March, and
April discussions and vote at the business
meeting in April on that limiting factor or those
limiting principles?

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

COMMISSIONER ADAMS: Well, isn't it
ture, Commissioner Kladney, that we --

COMMISSIONER KLANDNEY: But I
apologize, Commissioner Adams, for not thinking
about it sooner.

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

COMMISSIONER KLANDNEY: Yes, but my
mind doesn't work that fast.

COMMISSIONER ADAMS: Well, then,
Commissioner Kladney, I think you have a good
idea and I consider it to be a friendly amendment to adopt an AI sometime in the next month. Work on it; adopt it next month. But I do not agree that it's a friendly amendment to make this a conditional appointment.

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

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

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

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

CHAIR CANTU: Yes, please.

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

We did the best we could to follow up on how the AI was written to move the process
forward, and now we're on the vote. And the vote is up to Commissioners.

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

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

And we could assist Commissioners, if they so would like, with helping them draft an AI that may provide some level of understanding that Commissioner Kladney is seeking and others are seeking.
Thank you, Madam Chair.

CHAIR CANTU: Thank you.

COMMISSIONER KLADNEY: Madam Chair,

it's Kladney again.

CHAIR CANTU: Yes, just for

information, there already are requirements from
the U.S. Election Assistance Commission, and the
AI would only address any new requirements. So,
I also would not support a conditional vote. I
think that puts a cloud on both nominees, if
they're conditionally approved.

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

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

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

So, keep in mind a couple of
observations I have. The Sunshine Act and the
Federal Advisory Committee Act are applicable to the EAC Board of Advisors, and those statutes require that their meetings be public, that their meetings are public in the same manner in which the Commissions are. So, in terms of reporting, those meetings will be publicly available to the Commissioners and the general public at large.

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

And I pulled up their statute, and it doesn't have -- there's a two-year term, per the EAC statute. It doesn't, based on my just basic research I've done right now, you know, there isn't a provision for removal. This is an
advisory committee. So, you know, we're happy to
-- OGC can research the issue regarding how
removals are effectuated under the Federal
Advisory Committee Act, FACA, but I can't offer
anything definitive regarding removals.

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

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

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

MR. GANZ: I mean, generally, the body
to which someone is being appointed is going to
assess the rules, right? So, if the EAC has
certain rules regarding how they publish their
meeting notes or findings, and such, right, if we
issue an AI that conflicts with that -- and we
don't know, obviously, what those are because
it's their FACA; it's their Advisory Committee,
right? -- that would be problematic. So, generally, when someone's being appointed to be a member of some other agency's body, they need to function within that body's rules, rather than whatever rules we want to set for them.

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

COMMISSIONER YAKI: Can I answer? Can I answer? This is Commissioner Yaki. I believe that I'm an appointee of the United States Commission on Civil Rights, but this is as far as it goes. When I am there, I attempt to represent the interests to the extent that, if there is a position by the Commission on an issue that is referred to the EAC, I will bring it up. Generally, there is not. This is a very technical body that deals with issues of voting, as you know, Commissioner Kladney, voting machines, the Help America Vote Act, but, for the most part, it is drawing upon our expertise that we've developed as Commissioners that we bring to the body.

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

COMMISSIONER Kладney: I understand that, Commissioner Yaki. What my question is, is an outside person, are they bound by that rule? And that's what I'm asking the General Counsel. If they're treated as an appointee similar to a State Advisory Commission, and they are bound by that rule, that is fine. But we have no AI saying that.

MR. GANZ: Yes, I mean, I'm not sure. I mean, the question is a good one, but it gets into the nuances of how federal advisory committees function and who the members are representing. And obviously, this person doesn't need to be -- the EAC appointment statute doesn't require that the various agencies, including ours, that they appoint internal, you know, that that appointee is an employee or an SGE, a
Special Government Employee. So, I mean, it doesn't follow that they would be speaking for the Commission, given that they, you know, could be from the general population and a non-employee.

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

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

CHAIR CANTU: Excuse me. Excuse me. Excuse me.

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

CHAIR CANTU: People are talking.

MR. GANZ: But you can look at the actual language, the appointing language itself. It does not say, "We are appointing a representative of...." We simply are one of the
enumerated entities that is given the power to appoint two individuals.

COMMISSIONER Kladney: Right.

Mr. Ganz: That's my point. The point is --

COMMISSIONER Kladney: Yes, I think that's a good, I should say that, yes, that's a good observation.

COMMISSIONER ADAMS: Madam Chair?

Madam --

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

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

And I appreciate the legal counsel advice that there already are expectations from the EAC, the Election Assistance Commission. But if there are any additional expectations not
inconsistent with what the EAC wants, this is the right forum and the right place and the Commissioners are the right people to have that conversation.

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

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

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

COMMISSIONER HERIOT: It just seems to me that the issue of whether or not our designees will be able to speak for the Commission is a pretty easy one and our current rules are already enough. Either they are an agent of the Commission, in which case they are bound by the AI that says that the Chair, and in appropriate circumstances the Staff Director, speaks for the Commission, but others don't. Or, alternatively, they are not an agent of the Commission, in which case, you know, of course, they can't speak for the Commission any more than they can speak for
NASA. You know, it's obvious that they're not somehow our agent; then they don't have the authority to speak on our behalf. So that we really don't need a rule here. It's clear, they can't speak on behalf of the Commission.

COMMISSIONER KLADNEY: Madam Chair, Kladney.

CHAIR CANTU: Yes, Commissioner Kladney?

COMMISSIONER KLADNEY: Thank you, Commissioner Heriot.

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

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

COMMISSIONER KLADNEY: Well --

COMMISSIONER HERIOT: We don't need to bind them any more than you would bind anybody
else in the 330-some million people in the country.

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

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

COMMISSIONER ADAMS: Madam Chair --

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

COMMISSIONER ADAMS: Madam Chair --

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

Who's next on the queue?

(No response.)

Okay. Commissioner Adams, you have the floor.

COMMISSIONER ADAMS: Very quickly, Commissioner Yaki is exactly right. The wide variety of other government entities designate individuals to serve on this Board of Advisors.
The Justice Department does. They're just people who go as appointed people to go provide their expertise. They don't represent anybody. There's a wide variety of other entities that are doing this that Commissioner Yaki has been working with. He's exactly right; they're not an agent of the Commission.

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

COMMISSIONER ADAMS: Right.

COMMISSIONER HERIOT: Madam Chair?

CHAIR CANTU: Yes, Commissioner Heriot.

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

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

(No response.)
In the spirit of moving forward, do we have other comments with regards to describing the type of duties and responsibilities? We've heard from our General Counsel that the EAC already has described it to some detail.

(No response.)

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

MR. GANZ: Madam --

CHAIR CANTU: Yes?

MR. GANZ: Pardon me, Chair Cantu.

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

CHAIR CANTU: And I have gone online and listened to the most recent meeting, and I saw Commissioner Yaki chair the meeting. And I felt that I could have served, but I think the folk are pushing for more of a conversation, like a consultation. Is that where people are going
in terms of wanting to hear back? Or do they just want to watch the meeting?

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

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

Commissioner Adams --

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

CHAIR CANTU: -- does that meet your interests?

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

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

COMMISSIONER KLADNEY: Whatever. That would be fine.

CHAIR CANTU: Thank you.

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

COMMISSIONER YAKI: This is
Commissioner Yaki.

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

(Laughter.)


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

So, I would say let's make it reasonable and say 30 days, not a week, because there are a lot of people on that and a lot of words get spoken. And then, most of them are not familiar with parliamentary procedure. So, it can get a little wild. But it all gets distilled down into a summary within two weeks. So, a 30-day report would be more manageable, because then they would have the ability to review the minutes.
as well and attach them as an exhibit to whatever
report came up.

CHAIR CANTU: Thank you, Commissioner
Yaki.

Are we ready to vote?

(No response.)

Do we all know what we're voting on?

COMMISSIONER HERIOT: Can we restate
the motion?

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

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

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

To move forward the designations of
representatives of the Civil Rights Commission to
the Board of Advisors of the United States
Election Assistance Commission, in conformance
with the AI agreed upon at our April business
meeting, and including the names exchanged in
conformance with that AI. And for the record,
that is Commissioner Michael Yaki and Mrs. Cleta
Mitchell. That includes reporting to the
Commission and adherence to all applicable federal ethics rules.

CHAIR CANTU: Second?

We already had a second to that.

That's a restatement of the discussion. Your friendly amendment, Commissioner Kladney, was accepted.

I'm ready to call the question, folks.

All right. Call the question then.

Commissioner Adams, how do you vote?

COMMISSIONER ADAMS: Yes.

CHAIR CANTU: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

CHAIR CANTU: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Yes.

CHAIR CANTU: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR CANTU: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR CANTU: Commissioner Kladney?

COMMISSIONER KLABNEY: No.

CHAIR CANTU: Thank you.

Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIR CANTU: And I vote yes.
One abstention, 1 no, 6 yeses. The motion passes.

Did I get the math right?

(Laughter.)

COMMISSIONER KIRSANOW: It sounds right.

CHAIR CANTU: Thank you.

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

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

We now turn to the --

COMMISSIONER ADEGBILE: Madam Chair?

CHAIR CANTU: Yes, please.

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

CHAIR CANTU: Of course. Is this Commissioner Yaki?

COMMISSIONER YAKI: Pardon?

COMMISSIONER ADEGBILE: Adegbile.

CHAIR CANTU: I am so sorry. I will
keep trying until I get it right.

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

Thank you.

F. MANAGEMENT AND OPERATIONS

ù STAFF DIRECTOR'S REPORT

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

Mr. Morales?

MR. MORALES: Thank you, Madam Chair.

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

Thank you for your time, Madam Chair.

CHAIR CANTU: Thank you, Staff Director.

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

CHAIR CANTU: So, a point of
privilege, please, Commissioner Adegbile.

COMMISSIONER ADEGBILE: Yes, Madam Chair.

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

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

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

And it was then, and it is now, my understanding that Commissioner Heriot had
orally, and at her direction, reiterated in writing that she was not prepared to go forward on a notational vote with respect to the Findings and Recommendations, which is her right. She has that right as a Commissioner, and we had understood that that was what she had conveyed.

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

And there was cooperation from the members of the Commission to proceed on a notational on the substance of the report, on the report itself, but the reason that we didn't go
forward and have a notational vote on the Findings and Recs, which Commissioner Heriot was expressing some surprise or concern about at our last meeting, was for the very reason that Commissioner Heriot herself had conveyed that she did not consent and would not allow that to go forward, which, again, I reiterate is her right to do so.

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

And I just want to note, because it was not acknowledged on the record, that the day
before the scheduled meeting -- so, June 17th --
Commissioner Heriot's Special Assistant sent a
writing to the Chair that was confirming a
conversation that Commissioner Heriot had with
the Chair. And the purpose of this confirmatory
writing was to note that Commissioner Heriot
supported a notational vote on the report and
timeline; that Commissioner Heriot supported
starting the clock for statements. But
Commissioner Heriot does not -- emphasis "in the
writing" -- support a notational vote on the
Findings and Recommendations.

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

And so, all of this to me is largely
water under the bridge. The thing that I was
just puzzled about is why the language of
Commissioner Heriot would be introduced to accuse
the vote, the people trying to take the vote of
bad faith, when I don't think, did not observe,
certainly did not attend and did not see in
evidence anywhere bad faith on anybody's part, 
including on her objection to a notational vote, 
which, as I've said many times, is her right. 

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

COMMISSIONER HERIOT: Madam Chair?

CHAIR CANTU: Yes, Commissioner, 
please proceed.

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

You know, I now better understand why 
the Commissioner thought that I had said that I
would veto a notational vote back in June.

However, as we discussed in our telephone call back in June, that is not what I did.

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

Again, in that conversation we had back in June, we agreed at the end of the conversation that you would try to lobby members to pass the Findings and Recommendations, and that I would try to lobby members of the Commission not to pass the Findings and Recommendations. That's utterly inconsistent with the notion that I was getting ready to veto the notational vote.
I looked back at my emails over the time, and indeed, I did lobby members of the conservative caucus to vote no, fully expecting that you were going to schedule a notational vote. Yes, I would have preferred not to have it, but I was not going to veto it. Given the circumstances at the time, we had to move quickly in order to have a report that would be ready by the end of September.

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

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

We had our meeting cancelled for reasons that were totally unrelated to the Commission itself. The federal government declared a holiday. Okay, we needed to get that done. And it didn't happen.
I continue to regard it as absolutely outrageous that we would attempt to pass Findings and Recommendations after the Commissioners' statement had been written and filed. That makes a mockery of the 30-30-10 rule. So, I continue to find that outrageous.

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

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

So, I'm happy to --

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

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

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

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

CHAIR CANTU: And I state --

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

CHAIR CANTU: And I explained to you yesterday that, had the motion passed, we still would have had to follow the 30-30-10, and that would have been the next step. But because we moved so quickly, we never got to that. The vote did fail and --
COMMISSIONER HERIOT: No, no.

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

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

CHAIR CANTU: And I --

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

You know, we were trying to be
cooperative on our side. We were trying to be in
a situation where, yeah, we could get this report
out on time and still give Commissioners the time
that they need for their statements. The notion that, golly, gee, you know, had we passed the Findings and Recommendations, we could have adjusted the schedule, if that's true, you'd want to bring that up before the vote, not after.

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

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

COMMISSIONER ADEGBILE: Madam Chair?

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

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

Commissioner Adegbile?

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

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

So, on the strength of that statement --

COMMISSIONER HERIOT: That's not a --

COMMISSIONER ADEGBILE: On the --

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

COMMISSIONER ADEGBILE: Commissioner Heriot, I listened to you. I listened to you. I let you say everything you needed to say and I waited until it came to the end, and then, I began with my remarks, for lots of reasons. Not only is it our custom, but it's also hard for the
court reporter to transcribe crosstalk. And so, if you could just let me finish, I will be done shortly, and then, you can retask the words that we have on the page in the way that you wish.

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

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

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

My simple point is that whatever may be said about what I was doing with respect to
our statutory enforcement report, having seen
that statement and having had it conveyed to me,
it was reasonable to believe that you would, in
fact -- that you had conveyed accurately what
your position was, that you were agreeing to a
notational vote on one thing, but not the other.
And under the force of our rule, that means we
can't have a notational vote on the Findings and
Recommendations.

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

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

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

COMMISSIONER HERIOT: You know, now
that I have seen it, I think it's true that I
understand why you thought I would have vetoed
it. I don't think that's what Alex said, but I
can understand why, reading that, you would think
she's going to veto the notational vote, as
opposed to she would prefer that that notational
vote not occur and will vote no.

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

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

COMMISSIONER ADEGBILE: And I would
just respond by saying that there is a difference
in life and in the Commission between something
being inappropriate and accusing people of bad
faith. And I quoted a number of times what the
statement said, what the writing of your SA said,
and there's only one way to read those words.
And it was reasonable, under a combination of our
AI and that statement that was sent to confirm a conversation that you had been a party to, it was reasonable for us to believe that you meant what those words said, and meant it so much that you wanted to emphasize it with a confirmatory writing.

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

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

COMMISSIONER HERIOT: Again, let me emphasize it. Putting something like that on the agenda after the Commissioners' statements are in is highly inappropriate. And that would have
been so, even if one of the members of the
Commission had vetoed a notational vote. You
know, our rules allow an individual Commissioner
to do that. I don't think any individual
Commissioner would have wanted to do that. But
if one of them had, it would still be highly
inappropriate to amend the thing after the
statements are in.

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

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

CHAIR CANTU: Yes, Commissioner
Kladney.

COMMISSIONER KLADNEY: -- that
inappropriateness is a far cry in terms of an
allegation of bad faith. And I think
Commissioner Heriot knows that.
COMMISSIONER HERIOT: If you would prefer, if you would prefer to maybe use "highly inappropriate," I hereby change what I said earlier to highly inappropriate.

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

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

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

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

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

And I appreciate the Commissioner owning her instructions to the assistant and the
responses to that.

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

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

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

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

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

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

This is to certify that the foregoing transcript

In the matter of: Business Meeting

Before: US CCR

Date: 08-20-21

Place: teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

[Signature]

Court Reporter