U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC BUSINESS MEETING

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FRIDAY, APRIL 16, 2021

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The Commission convened via teleconference at 12:00 p.m. EDT, Peter Kirsanow and Michael Yaki, Co-Chairs, presiding.

PRESENT:

J. CHRISTIAN ADAMS, Commissioner
DEBO P. ADEGBILE, Commissioner
NORMA CANTU, Commissioner
GAIL HERIOT, Commissioner
STEPHEN GILCHRIST, Commissioner
PETER N. KIRSANOW, Commissioner
DAVID Kladney, Commissioner
MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director
DAVID GANZ, General Counsel
STAFF PRESENT:
PAMELA DUNSTON, Chief ASCD
TINALOUISE MARTIN, Director, OM
DAVID MUSSATT, Director, RPCU

COMMISSIONER ASSISTANTS PRESENT:
ALEC DEULL
ALEXANDER HEIDEMAN
JOHN. K MASHBURN
CARISSA MULDER
AMY ROYCE
THOMAS SIMUEL
IRENA VIDULOVIC
JUANA SILVERIO
T-A-B-L-E O-F C-O-N-T-E-N-T-S

I... JOINT MOTION TO APPROVE COMMISSIONER NORMA CANTÚ TO SERVE AS USCCR CHAIR AND TO ADOPT THREE ADMINISTRATIVE INSTRUCTIONS TO BE CODIFIED IN THE APPROPRIATE SECTIONS OF THE COMMISSION’S ADMINISTRATIVE INSTRUCTIONS.... 5

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OPERATOR: Good day and welcome to the Commission business meeting. Today's conference is being recorded. At this time, I would like to turn the conference over to Commissioners Peter Kirsanow and Michael Yaki.

Commissioners, please go ahead.

COMMISSIONER KIRSANOW: Thank you. First, I'd like to call the roll to see if we have a quorum.

Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

COMMISSIONER KIRSANOW: Okay. Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Present.

COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Here.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

COMMISSIONER KIRSANOW: And Commissioner Cantu?

COMMISSIONER CANTU: Present.

COMMISSIONER KIRSANOW: Okay. There being a --

COMMISSIONER YAKI: You forgot -- Commissioner,
point of personal privilege? You forgot to call my name.

COMMISSIONER KIRSANOW: I did that purposely. I try to forget you as often as I can, Michael.

COMMISSIONER YAKI: Well, since I really don’t answer to you, I wasn’t going to answer anyway, but for the record --

COMMISSIONER KIRSANOW: Okay. So, there’s a quorum of the Commissioners present. It’s approximately 12:02 p.m. and we are in order.

I. JOINT MOTION TO APPROVE COMMISSIONER NORMA CANTU TO SERVE AS USCCR CHAIR AND TO ADOPT THREE ADMINISTRATIVE INSTRUCTIONS TO BE CODIFIED IN THE APPROPRIATE SECTIONS OF THE COMMISSION’S ADMINISTRATIVE INSTRUCTIONS

And I’d like to make a -- along with Commissioner Yaki a joint motion. I hereby move that we confirm Commissioner Cantu, Norma Cantu as Chair and that we adopt jointly the following administrative instructions to be codified in the appropriate sections of the Commission’s administrative instructions.

First, an administrative instruction regarding Commission appointments to other federal entities that would read as Section 1.01: Any authority
specifically granted the Commission of Civil Rights by statute or regulation or executive order to appoint members to serve on other federal entities such as advisory boards, task forces, other commissions, et cetera, shall be exercised by the Commission as a whole by majority vote.

Section 2.1: For the two appointments to the U.S. Election Assistance Commission the member appointed by Democratic authorities shall nominate two individuals of their membership and the members appointed by the Republican authorities shall nominate two individuals of their membership.

Subsection 2 of Section 2: The members appointed by the Democratic authorities --

COMMISSIONER HERIOT: Pete?

COMMISSIONER KIRSANOW: -- shall select --

COMMISSIONER HERIOT: Pete? Pete, I think you meant the EAC Board of Advisors.

COMMISSIONER KIRSANOW: Okay. Strike that for the two appointments to the U.S. Election Assistance Board of Advisors the members appointed by the Democratic authorities shall nominate two individuals -- give me one moment here -- of their membership and the members appointed by the Republican Authorities shall nominate two individuals
of their membership.

Subsection 2: The members appointed by the Democratic authorities shall select one of the two individuals nominated by the members appointed by the Republican authorities and the members appointed by the Republican authorities shall select one of the two individuals nominated by the members appointed by the Democratic authorities.

And Subsection 3: The members selected shall be placed in nomination and ratified in conformance with Section 1.

Bear with me. Administrative Instruction 1-6, Section 11.03 and Section 12.02. Section 11.03 is: Staff is encouraged to use various sources to gather suggestions for appropriate hearing witnesses. Commissioners are the primary source of suggestions for hearing witnesses. Additional sources may include but are not limited to other program offices, regional directors and appropriate external groups.

If two commissioners request that staff invite a particular witness, staff must invite that witness. No commissioner may act jointly to invite more than two witnesses which results in no more than eight witnesses shall be required to be invited by staff by
action of the Commission.

Thereafter, a commissioner or commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them and staff may consult additional sources to invite additional witnesses for the hearing.

Section 12.02: Staff is encouraged to use various sources to gather suggestions for appropriate briefing witnesses. Commissioners are the primary source of suggestions for briefing witnesses. Additional sources may include but are not limited to other program offices, regional directors and appropriate external groups.

If two commissioners jointly request that staff invite a particular witness, staff must invite that witness. No commissioner may act jointly to invite more than two witnesses which results in no more than eight witnesses shall be required to be invited by staff by action of the Commission.

Thereafter, a commissioner or commissioners may suggest as many witnesses as they deem advisable, but staff is not obligated to invite them, and staff may consult additional sources to invite additional witnesses for hearings.

And then Administrative Instruction regarding
interviews of witnesses.

As the staff persons arrange for interviews of external fact witnesses or experts for the purposes of informing writing of reports, et cetera, the commissioners shall be given or will be given notice of the names and titles of proposed witnesses so that the commissioners and their special assistants can observe the interview firsthand. The observations will help the commissioners better understand the subject matters covered and enable the commissioner to conduct and follow up with questions of the witnesses.

If more than one commissioner or commissioner’s special assistant representing Democratic or Republican appointing authorities wishes to attend, the staff director may limit attendance to one representative from each provided circumstances clearly warrant such a limit.

One moment here. We do have -- I don’t have it in front of me, but we have -- Michael, do you have the other -- we had two additional -- and I don’t have it in front of me.

COMMISSIONER YAKI: What do you mean?

COMMISSIONER KIRSANOW: In terms of the --

COMMISSIONER YAKI: Those are the AIs that --
COMMISSIONER KIRSANOW: The AIs, right, but we had the two -- Norma is going to read into the record her agreement with respect to the other two issues.

COMMISSIONER CANTU: I’d be happy to.

COMMISSIONER YAKI: Okay. Norma has it.

COMMISSIONER CANTU: Okay.

(Simultaneous speaking.)

COMMISSIONER CANTU: Before I start --

COMMISSIONER YAKI: The Co-Chair recognizes Commissioner Cantu to read the statements into the record.

COMMISSIONER CANTU: And before I start on the statement --

COMMISSIONER ADEGBILE: Okay. Commissioner Yaki, can you just note for the record I’d like to be heard?

COMMISSIONER YAKI: Yes. We’ll take discussion after the entire motion is heard.

Commissioner Cantu, you may proceed.

COMMISSIONER CANTU: Yes, and with regard -- regarding the AIs, there was robust discussion, but of course not action taken because that comes to the full Commission. In the robust discussion we did not include or staff or staff director or the general counsel, and AIs typically include that. So in the discussion we will be sure that we don’t skip very
important processes for concluding this.

As far as additional statements I have one regarding Speaker Series that the -- that was an activity conducted at commissioner’s meetings and I want to rescind as one of my first actions, if selected Chair, that activity. I understand that it doesn’t appear in any AI, and I have heard commissioners want to have the time back. So in light of commissioner input on the Speaker Series I express my commitment to discontinue that activity.

And if it happens that the majority commissioners want to bring that back, I personally will try to find out if -- how bipartisan the Speaker Series will be and I will look at how much time it would take in terms of using the resources of the commissioner’s meetings. If it is not meeting the commissioners’ interest of a bipartisan share or diversity, a progressive and conservative caucus, I will vote against the proposal to reinstate the Speaker Series.

The second statement is with regards to an existing Administrative Instruction, AI 1-6, and it has to do with the process and timing of responding to reports of fact finding and legal decisions.

COMMISSIONER HERIOT: Could you please read as we
COMMISSIONER CANTU: I’m going to. I’m just describing it so that it’s -- it’s going to go through. Okay.

The Chairperson -- if I’m elected and I’m the Chairperson, I will agree and place in the record at a telephonic business meeting, which I’m doing today, that the Administrative Instructions, AI 1-6, Section 18, Part C, provides for written contributions from individual commissioners to commission reports. And these written contributions called commissioner statements, rebuttals and surrebuttals are not intended to echo what is already in the report, nor are they merely defense.

These documents help make the Commission more transparent in showing how a commissioner viewed data collection and legal reasoning. I support continuing the procedure of a hearing to a time frame of 30 days for statements, 30 days for rebuttals, and if three commissioners agree a surrebuttal is needed, 10 days for the surrebuttal because I’ve been assured that the opportunity to respond to the report would not be used as a means to delay the public release of the reports.

While I am on this Commission I will vote with
my colleagues to keep the statements, rebuttals, and surrebuttals as part of the efforts to give voice to our commissioners’ diverse and balanced views and approaches to fulfilling the Commission’s mission.

COMMISSIONER KIRSANOW: Thank you.

COMMISSIONER CANTU: You’re welcome.

COMMISSIONER KIRSANOW: I make a motion to confirm Commissioner Cantu as Chair and to adopt the three Administrative Instructions that I recited and Commissioner Cantu’s representation with respect to adhering to the two provisions that she just recited.

Having been read into the record, is there a second for the motion?

COMMISSIONER YAKI: Yes, I will second the motion to put the three AIs -- to move the three AIs and to put Commissioner Cantu’s statements into the record.

And why don’t we open it up for discussion? I know Commissioner Adegbile would like to be recognized on this.

COMMISSIONER ADEGBILE: Yes, thank you, Commissioner Yaki.

Today we’re here on very important business to try and confirm our designated Chair, and apparently to consider what are very detailed and specific Administrative Instructions which are in effect...
legislative rules by which Commission business is intended to be conducted in the future.

I for one have not heard or seen the text of the proposed Administrative Instructions until Commissioner Kirsanow began to read them into the record today. And it’s unusual to be asked to vote upon very detailed and specific legislation that is being read into a record and causing people to try and analyze the appropriateness and the implications of these rule without an adequate time to see the text, to review it, to consider it, to consider the implications, to have the benefit of the general counsel’s opinions and advice and to understand how these AIs interact or not with existing AIs and/or break with or extend existing customs and traditions of the Commission.

And so I think that we have been put in a difficult situation where we are coupling the vote on designating or ratifying the appointment of a Chair with very complicated rules and legislation that I, and I suspect other members of the Commission, have never seen and had provided to us not -- which is not consistent with our circulation rules. And I just want to make that known for the record because it will affect how I think I will have to proceed here.
Thank you.

COMMISSIONER Kladney: Mr. Yaki? Chair Yaki, Chair Kirsanow, this is Dave Kladney. Could I be heard?

COMMISSIONER YAKI: Commissioner Kladney, you’re recognized.

COMMISSIONER Kladney: I would like to object to these proceedings as the supposed AIs violate our AI saying that everything must be circulated 48 hours before the meeting. And I concur with Commissioner Adegbile’s assessment. Thank you.

COMMISSIONER YAKI: So noted. I will note that these matters were put on the agenda prior to the meeting.

So, Chair Kirsanow, do you want to -- is there any further discussion from the body?

(No audible response.)

COMMISSIONER YAKI: Seeing none, Co-Chair Kirsanow, why don’t you call the roll?

COMMISSIONER KIRSANOW: Commissioner Yaki, I believe Chair Cantu wanted to hear from staff director.

COMMISSIONER YAKI: Ah, that is correct. Actually and from the general counsel.

So, Mr. Staff Director, you are recognized.
And after that Mr. General Counsel, if you so wish to speak, you may follow.

MR. MORALES: Thank you, Commissioner Yaki and Commissioner Kirsanow, for allowing me the opportunity to speak here, and all the commissioners of course. And you know he now served over six years as the staff director and highly value the work that commissioners, SAs and staff have done to carry out the mission of the Commission.

I want to state for the record that I object to two of the three AIs. I don’t have an opinion on the political appointments to the Election Advisory Commission. That is a matter of commissioner prerogative.

I do object however to the AI on witness selection. It’s unclear to me what the need is for this AI. OCRE already consults extensively with SAs and commissioners on the selection of witnesses; they allow commissioners to select witnesses. And to allow commissioners themselves to collect or select witnesses would fundamentally change the purpose and the function of OCRE. It would undermine their ability to do a substantive and objective investigation. Commissioners and SAs do not write reports; OCRE does. And commissioners’ selection of
witnesses would no longer provide OCRE with a purpose
to create reports. So for the record I object to that
AI. We have also not consulted with general counsel
and OCRE on its implications.

And then on the second AI, the AI on OCR
witnesses, I do not understand the need for that AI.
OCRE does not interview witnesses. Witnesses are
heard from by all commissioners in a briefing.

You’re talking about one specific instance. It
was in the writing of the report on the minimum wage
where people with severe disabilities, cognitive
disabilities, highly sensitive emotional,
psychological and mental issues requested that OCRE
not allow external individuals to witness or see them
being questioned. The questions were standard
questions that were submitted to commissioners and
commissioners received answers.

Again, allowing commissioners to witness highly
sensitive situations like that with these types of
individuals would be unprofessional and unjustified
and I would again not encourage commissioners to
enter into interviews with these types of highly
sensitive individuals.

With that I leave to the commissioners their
decision.
COMMISSIONER KLANDNEY: Commissioner Yaki, may I be heard again?

COMMISSIONER YAKI: Thank you.

Commissioner Kladney, before you speak does the general counsel wish to make any statements?

MR. GANZ: Hi, everyone. This is David Ganz. Yes, I’d like to state for the record that a best practice would be to have a review to ensure that these essentially agency policies are consistent with existing legal authorities, the authorizing statute and our regulations, to ensure that there’s not a violation of the Administrative Procedures Act and that any of these AIs shouldn’t be subject to a notice and comment or other formal rulemaking.

So with that being said, yes, I would generally believe that a review of any sort of binding agency policy should go through essentially a legal sufficiency review by the General Counsel’s Office and other interested program offices to ensure that they’re consistent with existing agency policies and Administrative Instructions.

COMMISSIONER YAKI: Okay. Thank you very much --

MR. GANZ: That’s all I have.

COMMISSIONER YAKI: -- Mr. General Counsel.

MR. GANZ: Thank you.
COMMISSIONER KIRSANOW: Thank you, Mr. General Counsel.

Commissioner Kladney?

COMMISSIONER KLADENEY: Thank you, Commissioner Yaki.

In regards to my prior statement I would like to put into the record and ask the general counsel if this proceeding and proceeding this way in regards to these proposed written documents that I received at 8:59 this morning in my email, which I just noticed -- I would like to ask him if Administrative Instruction 1-24 is being violated by the procedure taken upon by this body here today.

In pertinent part it reads: Optimally a proposed document will be circulated to all commissioners seven days in advance of a meeting. A document must be presented to all commissioners at least 48 hours before a vote is taken at a meeting to adopt the document. If a proposed document has not been presented to all commissioners at least 48 hours in advance of the vote, a commissioner may object to the voting on the matter and a vote may not be taken until 48 hours after all commissioners have received the document.

Therefore, I find that any vote taken here today
COMMISSIONER YAKI: Thank you, Commissioner Kladney.

General counsel, do you have a response?

MR. GANZ: Just give me a moment to -- I’m just looking at AI 124. Yes, I mean, my reading of Section 3.02, it states if a proposed document has not been presented to all commissioners at least 48 hours in advance, a commissioner may object to voting on the matter and a vote may not be taken until 48 hours after all the commissioners have received the document.

I’d like probably more time to study this issue, but the plain text and so -- state of this AI which was passed by unanimous commissioner votes in I believe 2016 -- it would seem to indicate that a vote cannot be taken.

COMMISSIONER YAKI: Well, I have a question for; this is Commissioner Yaki, the staff director because the general counsel would not have had the benefit of that history.

We have had the ability in certain circumstances to waive the 48-hour rule on exigent circumstances, and in fact we have done it on more than one occasion. Is that not the case, Mr. Staff Director?
MR. MORALES: That would be in order. A motion would have to be made to waive the rule and it would have to be a majority of commissioners.

I would state, as you had mentioned, Commissioner Yaki, that on the agenda there were -- three of the items that have been subject to this were on the agenda, so those three would be available for a vote. Doesn't have to be a document. It could be -- a motion could be made on those three items and those three items could be taken up.

However, on a written document, as Commissioner Kladney has stated, he would be correct in the sense of the AIs were not circulated, or the draft AIs were not circulated to commissioners within that 48-hour rule. However, they could do a voice motion on those three items that were noticed in the agenda.

COMMISSIONER YAKI: Thank you very much, Mr. Staff Director.

COMMISSIONER KLADNEY: Chair Yaki, I don’t recall ever waiving this except unanimously, by a unanimous vote.

COMMISSIONER YAKI: That is -- I think -- Commissioner Kladney, thank you very much. I think that the rule on waiver does not require unanimity. It has been a practice I believe in us, but unless
the staff director contradicts me, I do not believe there’s a unanimity requirement for waiver, only majority vote, as with any other privilege motion.

But before we get to that, I think we need to clarify exactly what we would need to do.

And first I would ask, Commissioner Kirsanow, if the document that you read from, could you please have you or your staff person email it to all the commissioners right now?

COMMISSIONER KIRSANOW: Yes, I think we can do that.

COMMISSIONER YAKI: Okay. As soon as it has been emailed would you please let me know? And we will wait until we have confirmation of that.

PARTICIPANT: Carissa, can you make sure email that to everybody?

MS. MULDER: I already emailed it.

COMMISSIONER ADEGBILE: Commissioner Yaki, this is Commissioner Adegbile. May I be heard?

COMMISSIONER YAKI: Yes, Commissioner Adegbile.

COMMISSIONER ADEGBILE: My view is that part of the difficulty we’re having is that we are trying to proceed, as I have said, and as Commissioner Kladney has echoed, on very specific and detailed administrative law rulemaking without adequate time
to consider and review the documents and that whatever may be said about practices with respect to waiver of time and circulation rules, I am not aware that those rules have ever been waived, certainly not while I’ve been on the Commission, in the context of this type of administrative rulemaking.

It's different when it’s a short statement that people can digest and understand quickly, but these are issues that have more serious implications, that have legal ramifications, as the general counsel has made us aware. And I think that the reason for the circulation rule is essentially to avoid the circumstance in which we now find ourselves in which people are being asked without adequate time to fully consider and reflect, to make judgments and votes that could be binding and bind, and in this case change the practices of a federal agency charged with consulting and reviewing and researching issues of serious important areas of civil rights.

And so the grave concerns that I am making are about this effort to reorder the business of the U.S. Civil Rights Commission effectively with no notice. Thank you.

COMMISSIONER Kladney: Commissioner Yaki, Dave Kladney again.
COMMISSIONER YAKI: Commissioner Kladney?

COMMISSIONER Kladney: Yes, I actually don’t see what the rush is unless someone is trying to push something through to change, to significantly change the operation of the Commission and the authority of those involved with the Commission. And I think that we should continue this matter until next month’s meeting, and I would move that if a motion was proper in this place.

COMMISSIONER YAKI: So you would like to --

COMMISSIONER Kladney: It may --

COMMISSIONER YAKI: -- what you’re asking is that -- just a second. Just a second. Commissioner Kladney, what you’re asking is if you can amend the motion on the floor and for a substitute motion to continue these items until the next meeting. Is that correct?

COMMISSIONER Kladney: That is correct. That is correct, Commissioner Yaki.

COMMISSIONER YAKI: Is there a second for that motion?

COMMISSIONER ADEGBILE: Seconded.

COMMISSIONER YAKI: Okay. There’s a second by Commissioner Adegbile to vote on the substitute motion by Commissioner Kladney. Is there discussion
1 on the motion?

2 COMMISSIONER ADEGBILE: Yes, Commissioner --

3 COMMISSIONER YAKI: Commissioner Adegbile?

4 COMMISSIONER ADEGBILE: -- Adegbile would like to
discuss.

5 Before we take a vote on the substitute motion
6 I would like the opinion of the general counsel on
7 the issue that has been discussed about whether
8 waiver of the timing rule requires unanimity or not.

9 COMMISSIONER HERIOT: Mr. Chair?

10 COMMISSIONER YAKI: Mr. General Counsel, there
11 has been a question directed to you by Commissioner
12 Adegbile. Do you have an answer to that question?

13 MR. GANZ: Yes, I mean at the outset I’d like to
direct to the staff director a question as to past
14 practice as to obtaining legal opinions at Commission
15 meetings, if it requires -- if any one commissioner
16 can request one or if it requires some sort of
17 consensus or majority, just in an abundance of
18 caution to not violate past practices of the
19 Commission.

20 COMMISSIONER YAKI: Mr. Staff Director?

21 MR. MORALES: Yes, that’s a good question. This
22 is a novel question. I don’t think we’ve ever come up
23 with a situation like this where we’ve requested a
general counsel to make an immediate legal opinion on something that’s as novel as this and new.

I would again urge caution that we make the right decision here on a unanimous requirement for a waiver, so I would defer on that.

COMMISSIONER YAKI: Thank you.

I heard Commissioner Heriot. Do you wish to be recognized on this motion?

COMMISSIONER HERIOT: Yes, I just want to say that my understanding of the rule is that, yes, in truly exigent circumstances the Commission could vote, but in circumstances that are not that, that it should be that any individual commissioner should be able to object and thereby have the issue put off until another time. That would have been my understanding to the rule and I think every time I’ve seen it invoked it’s consistent with that, though I can’t tell you that I remember every time that it’s been invoked. I’ve spent a long time this Commission.

The other thing I would say, even if this is put off, I’m not -- I don’t see the reason to put it off until the next meeting. I think this could be handled by a notational vote.

COMMISSIONER CANTU: May I be recognized? This is Norma.
COMMISSIONER YAKI: Commission Cantu?

COMMISSIONER CANTU: Yes, we have had a problem getting language exchanged between the caucuses, and that has led to delay, but I do agree and I do completely empathize with commissioners. I don’t like to be rushed either. However, I don’t believe it would take a full month, that we are in -- I’m keeping track; we are in week nine of Norma not participating as Chair, but we’re really in week 12, starting with 13 of not having a chair. And adding another four weeks to that I think is a problem with so many important things happening involving civil rights and no ability to vote on it as a Commission without a chair.

COMMISSIONER ADEGBILE: Commissioner Yaki, may I --

COMMISSIONER CANTU: But --

COMMISSIONER YAKI: Commissioner Adegbile?

COMMISSIONER CANTU: I’m sorry.

COMMISSIONER ADEGBILE: Sorry, Commission Cantu, I didn’t mean to cut you off if you were not done with your --

(Simultaneous speaking.)

COMMISSIONER CANTU: No, I was done.

COMMISSIONER YAKI: She’s finished,
Commissioner. Commissioner Adegbile, you’re recognized.

COMMISSIONER ADEGBILE: Okay. Thank you. Thank you for the thoughtful comments of my fellow commissioners.

I would like to ask Commissioner Kladney if he would be open to revising his motion so that we could consider an alternative to a possible vote before the next meeting such that it would be either a vote prior to the business or a vote by the time of the next meeting.

And I would also like to put on the record that Administrative Instruction 1-24 says that if a -- in Section 3, Subsection 2, I believe -- if a proposed document has not been presented to all commissioners at least 48 hours in advance of the vote, a commissioner may object to voting on the matter and a vote may not be taken until 48 hours after all of the commissioners have received the document.

So I would like to direct the general counsel and the executive director of the Commission to this AI. It is this judgment and interpretations on the fly that is the gravamen of the concern that I’m raising and that Commissioner Kladney is raising that the work has not been done to be prepared to take
this vote in a thoughtful and appropriate way consistent with our legal obligation, and I would urge that some version of Commissioner Kladney’s motion be accepted.

COMMISSIONER YAKI: Thank you, Commissioner Adegbile.

Do you have a formal request to amend Commissioner Kladney’s motion?

COMMISSIONER ADEGBILE: I yield to the senior Great State of Nevada.

COMMISSIONER YAKI: How about this? Commissioner Kladney, would you amend your motion to be a special meeting within two weeks, duly noticed by the end of the day today, for the purposes of taking up this motion and the -- in other words, what we would do is we would ask that we carry over the entire agenda of today’s meeting to a special meeting two weeks from today or as soon after that thereafter in order to vote on this agenda, on the items on this agenda, and included in that agenda these three AIs? That would give the -- during that time the general counsel would be able to review these and provide comments on them prior to our vote. Would that be acceptable to you, Commissioner?

(No audible response.)
COMMISSIONER YAKI: Kladney?

COMMISSIONER KLADNEY: Oh, excuse me. I was on mute. I apologize.

COMMISSIONER YAKI: I figured as such. It is rare for you not to take the opportunity.

COMMISSIONER KLADNEY: I don’t think I have an objection to that as long as everything we’re going to vote on appears on the agenda and is attached thereto.

COMMISSIONER YAKI: That’s what I just stated.

Commissioner Kirsanow, as the author of the underlying motion would you have an objection to carrying this over for two weeks including in the agenda all the items that you read into the record today for the purposes of Sunshine and transparency and carrying over the agenda as will be amended and revised to incorporate these items for a special meeting two weeks from now or as soon after thereafter?

COMMISSIONER KIRSANOW: Give me one moment. I have no objection.

COMMISSIONER YAKI: Great.

Okay. So on the substitute motion, that motion shall be that the agenda for today including the -- shall be carried over and revised to include the
three -- the items read into the record today by Commissioner Kirsanow shall be listed -- shall be added to that agenda, that it shall be circulated in written format in a timely fashion prior to that meeting and it will be carried -- all of this will be carried over to a special meeting to occur no sooner, simply because of notice requirements, than two weeks from now, but as soon thereafter for the purposes of -- as the substitute motion.

Is there a second for that?

COMMISSIONER ADEGBILE: Commissioner Yaki?

COMMISSIONER YAKI: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Would it be possible to just end -- add to what you have said, that we would have the opportunity to have the legal opinion of the general counsel prior to the vote?

COMMISSIONER YAKI: I don’t know if we should -- we will require -- I want to require it, but I do believe that this will give the general counsel enough time to perform his general counsel duties which include reviewing all proposed AIs. I think the word legal people would be a little much.

But yes, this would -- the -- let me state this motion very clearly: The substitute motion to Commissioner Kladney’s motion to substitute
Commissioner Kirsanow’s original motion is this: We shall carry over this agenda and revise it to include the three written AIs read by Commissioner Kirsanow today into the agenda. Those AIs shall be written and distributed to the entire Commission including the staff director and the general counsel prior to that meeting.

The general counsel may circulate comments if he or she so desires -- that’s all that he, sorry -- on his review of those Administrative Instructions for the Commission to consider at their meeting.

This meeting shall be -- occur no sooner than two weeks from today but as soon thereafter as is possible to be -- to fit the requirements of notice and commissioners’ schedules.

That is the motion on the floor. Is there a second for that motion?


COMMISSIONER YAKI: A second by Commissioner Adegbile.

Is there any discussion on this motion?

Commissioner Heriot? Commissioner Kirsanow, any discussion?

(No audible response.)
COMMISSIONER YAKI: If not the, substitute motion --

COMMISSIONER CANTU: I have a concern, folks. And that is --

COMMISSIONER YAKI: Commissioner Cantu?

COMMISSIONER CANTU: Yes, please. The discussion of the AIs has been in flux where when I raise an objection that -- about one AI, a new one appears. So if you all can offer me some suggestions so I can manage my time and plan accordingly, will we only be discussing the existing three AIs and no others?

COMMISSIONER YAKI: Commissioner, let me answer that.

Commissioner Cantu, the motion is to simply take the agenda items from today, put the three items read into the record by Commissioner Kirsanow as additional agenda items as amendments to the Administrative Instructions as the agenda for the meeting two weeks from today. That will be the agenda.

COMMISSIONER KLANDNEY: To be clear, that includes the vote on the chair, correct?

COMMISSIONER YAKI: Yes, it’s the -- yes. Yes, it includes the vote on the chair.

Should any commissioner wish to add additional items to that agenda, it would have to follow regular
order, which means that since there is no chair to put anything on the agenda, it would have to be brought up and voted on at the time of the Commission meeting itself. It would have to be noticed. There would have to be -- it would follow the 48-hour rule, all those other sorts of things.

We can’t control everything that everyone want to say right now, but it would have to follow regular order. And in the absence of a chair the only way to put additional things on the agenda for this special meeting shall be at the meeting itself following regular order, which is another way of saying it’s going to be darn hard to do that.

So that would be my interpretation of that, Commissioner Cantu.

COMMISSIONER CANTU: Thank you.

COMMISSIONER KIRSANOW: Any further discussion?

(No audible response.)

COMMISSIONER YAKI: Let’s call the roll.

COMMISSIONER KIRSANOW: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: In -- on -- let’s phrase the motion. For the substitute motion offered by Commissioner Yaki, you’re calling the roll. Commissioner Yaki votes aye.
COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER KIRSANOW: And I vote yes. My tally shows eight, zero. The motion passes.

COMMISSIONER KIRSANOW: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

COMMISSIONER KIRSANOW: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Heriot?

COMMISSIONER HERIOT: I’ll vote yes. I’d have been happy to vote on this here as well, but I’ll vote yes on this.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Aye.

COMMISSIONER KIRSANOW: Commissioner Cantu?

COMMISSIONER CANTU: Yes.

COMMISSIONER KIRSANOW: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: Aye.

COMMISSIONER KIRSANOW: Commissioner Adams?

COMMISSIONER ADAMS: Yes.

COMMISSIONER KIRSANOW: And I vote yes. My tally shows eight, zero. The motion passes.

COMMISSIONER YAKI: There being no further business before this Commission, we are adjourned.

(Whereupon, the above-entitled matter went off the record at 12:48 p.m.)