

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

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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

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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

II..... ADJOURN MEETING
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P-R-O-C-E-E-D-I-N-G-S

12:01 p.m.

1 OPERATOR: Good day and welcome to the Commission
2 business meeting. Today's conference is being
3 recorded. At this time, I would like to turn the
4 conference over to Commissioners Peter Kirsanow and
5 Michael Yaki.
6

7 Commissioners, please go ahead.

8 COMMISSIONER KIRSANOW: Thank you. First, I'd
9 like to call the roll to see if we have a quorum.
10

11 Commissioner Heriot?

12 COMMISSIONER HERIOT: I'm here.

13 COMMISSIONER KIRSANOW: Okay. Commissioner
14 Gilchrist?

15 COMMISSIONER GILCHRIST: Present.

16 COMMISSIONER KIRSANOW: Commissioner Adams?

17 COMMISSIONER ADAMS: Here.

18 COMMISSIONER KIRSANOW: Commissioner Kladney?

19 COMMISSIONER KLADNEY: Here.

20 COMMISSIONER KIRSANOW: Commissioner Adegbile?

21 COMMISSIONER ADEGBILE: Present.

22 COMMISSIONER KIRSANOW: And Commissioner Cantu?

23 COMMISSIONER CANTU: Present.

24 COMMISSIONER KIRSANOW: Okay. There being a --

25 COMMISSIONER YAKI: You forgot -- Commissioner,

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1 point of personal privilege? You forgot to call my
2 name.

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

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

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

11 **I. JOINT MOTION TO APPROVE COMMISSIONER NORMA**
12 **CANTU TO SERVE AS USCCR CHAIR AND TO ADOPT THREE**
13 **ADMINISTRATIVE INSTRUCTIONS TO BE CODIFIED IN THE**
14 **APPROPRIATE SECTIONS OF THE COMMISSION'S**
15 **ADMINISTRATIVE INSTRUCTIONS**

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

23 First, an administrative instruction regarding
24 Commission appointments to other federal entities
25 that would read as Section 1.01: Any authority

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1 specifically granted the Commission of Civil Rights
2 by statute or regulation or executive order to
3 appoint members to serve on other federal entities
4 such as advisory boards, task forces, other
5 commissions, et cetera, shall be exercised by the
6 Commission as a whole by majority vote.

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

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

15 COMMISSIONER HERIOT: Pete?

16 COMMISSIONER KIRSANOW: -- shall select --

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

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

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1 of their membership.

2 Subsection 2: The members appointed by the
3 Democratic authorities shall select one of the two
4 individuals nominated by the members appointed by the
5 Republican authorities and the members appointed by
6 the Republican authorities shall select one of the
7 two individuals nominated by the members appointed by
8 the Democratic authorities.

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

12 Bear with me. Administrative Instruction 1-6,
13 Section 11.03 and Section 12.02. Section
14 11.03 is: Staff is encouraged to use various sources
15 to gather suggestions for appropriate hearing
16 witnesses. Commissioners are the primary source of
17 suggestions for hearing witnesses. Additional sources
18 may include but are not limited to other program
19 offices, regional directors and appropriate external
20 groups.

21 If two commissioners request that staff invite
22 a particular witness, staff must invite that witness.
23 No commissioner may act jointly to invite more than
24 two witnesses which results in no more than eight
25 witnesses shall be required to be invited by staff by

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1 action of the Commission.

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

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

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

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

25 And then Administrative Instruction regarding

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1 interviews of witnesses.

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

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

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

23 COMMISSIONER YAKI: What do you mean?

24 COMMISSIONER KIRSANOW: In terms of the --

25 COMMISSIONER YAKI: Those are the AIs that --

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1 COMMISSIONER KIRSANOW: The AIs, right, but we
2 had the two -- Norma is going to read into the record
3 her agreement with respect to the other two issues.

4 COMMISSIONER CANTU: I'd be happy to.

5 COMMISSIONER YAKI: Okay. Norma has it.

6 COMMISSIONER CANTU: Okay.

7 (Simultaneous speaking.)

8 COMMISSIONER CANTU: Before I start --

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

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

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

16 COMMISSIONER YAKI: Yes. We'll take discussion
17 after the entire motion is heard.

18 Commissioner Cantu, you may proceed.

19 COMMISSIONER CANTU: Yes, and with regard --
20 regarding the AIs, there was robust discussion, but
21 of course not action taken because that comes to the
22 full Commission. In the robust discussion we did not
23 include or staff or staff director or the general
24 counsel, and AIs typically include that. So in the
25 discussion we will be sure that we don't skip very

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1 important processes for concluding this.

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

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

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

25 COMMISSIONER HERIOT: Could you please read as we

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1 read it?

2 COMMISSIONER CANTU: I'm going to. I'm just
3 describing it so that it's -- it's going to go
4 through. Okay.

5 The Chairperson -- if I'm elected and I'm the
6 Chairperson, I will agree and place in the record at
7 a telephonic business meeting, which I'm doing today,
8 that the Administrative Instructions, AI 1-6, Section
9 18, Part C, provides for written contributions from
10 individual commissioners to commission reports. And
11 these written contributions called commissioner
12 statements, rebuttals and surrebuttals are not
13 intended to echo what is already in the report, nor
14 are they merely defense.

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

25 While I am on this Commission I will vote with

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1 my colleagues to keep the statements, rebuttals, and
2 surrebuttals as part of the efforts to give voice to
3 our commissioners' diverse and balanced views and
4 approaches to fulfilling the Commission's mission.

5 COMMISSIONER KIRSANOW: Thank you.

6 COMMISSIONER CANTU: You're welcome.

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

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

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

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

20 COMMISSIONER ADEGBILE: Yes, thank you,
21 Commissioner Yaki.

22 Today we're here on very important business to
23 try and confirm our designated Chair, and apparently
24 to consider what are very detailed and specific
25 Administrative Instructions which are in effect

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1 legislative rules by which Commission business is
2 intended to be conducted in the future.

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

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

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1 Thank you.

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

5 COMMISSIONER YAKI: Commissioner Kladney, you're
6 recognized.

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

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

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

17 (No audible response.)

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

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

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

25 So, Mr. Staff Director, you are recognized.

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1 And after that Mr. General Counsel, if you so
2 wish to speak, you may follow.

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

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

15 I do object however to the AI on witness
16 selection. It's unclear to me what the need is for
17 this AI. OCRE already consults extensively with SAs
18 and commissioners on the selection of witnesses; they
19 allow commissioners to select witnesses. And to allow
20 commissioners themselves to collect or select
21 witnesses would fundamentally change the purpose and
22 the function of OCRE. It would undermine their
23 ability to do a substantive and objective
24 investigation. Commissioners and SAs do not write
25 reports; OCRE does. And commissioners' selection of

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1 witnesses would no longer provide OCRE with a purpose
2 to create reports. So for the record I object to that
3 AI. We have also not consulted with general counsel
4 and OCRE on its implications.

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

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

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

24 With that I leave to the commissioners their
25 decision.

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1 COMMISSIONER KLADNEY: Commissioner Yaki, may I
2 be heard again?

3 COMMISSIONER YAKI: Thank you.

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

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

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

22 COMMISSIONER YAKI: Okay. Thank you very much --

23 MR. GANZ: That's all I have.

24 COMMISSIONER YAKI: -- Mr. General Counsel.

25 MR. GANZ: Thank you.

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1 COMMISSIONER KIRSANOW: Thank you, Mr. General
2 Counsel.

3 Commissioner Kladney?

4 COMMISSIONER KLADNEY: Thank you, Commissioner
5 Yaki.

6 In regards to my prior statement I would like to
7 put into the record and ask the general counsel if
8 this proceeding and proceeding this way in regards to
9 these proposed written documents that I received at
10 8:59 this morning in my email, which I just noticed --
11 I would like to ask him if Administrative Instruction
12 1-24 is being violated by the procedure taken upon by
13 this body here today.

14 In pertinent part it reads: Optimally a proposed
15 document will be circulated to all commissioners
16 seven days in advance of a meeting. A document must
17 be presented to all commissioners at least 48 hours
18 before a vote is taken at a meeting to adopt the
19 document. If a proposed document has not been
20 presented to all commissioners at least 48 hours in
21 advance of the vote, a commissioner may object to the
22 voting on the matter and a vote may not be taken until
23 48 hours after all commissioners have received the
24 document.

25 Therefore, I find that any vote taken here today

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1 will not be valid. Thank you.

2 COMMISSIONER YAKI: Thank you, Commissioner
3 Kladney.

4 General counsel, do you have a response?

5 MR. GANZ: Just give me a moment to -- I'm just
6 looking at AI 124. Yes, I mean, my reading of Section
7 3.02, it states if a proposed document has not been
8 presented to all commissioners at least 48 hours in
9 advance, a commissioner may object to voting on the
10 matter and a vote may not be taken until 48 hours
11 after all the commissioners have received the
12 document.

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

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

22 We have had the ability in certain circumstances
23 to waive the 48-hour rule on exigent circumstances,
24 and in fact we have done it on more than one occasion.
25 Is that not the case, Mr. Staff Director?

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1 MR. MORALES: That would be in order. A motion
2 would have to be made to waive the rule and it would
3 have to be a majority of commissioners.

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

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

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

19 COMMISSIONER KLADNEY; Chair Yaki, I don't recall
20 ever waiving this except unanimously, by a unanimous
21 vote.

22 COMMISSIONER YAKI: That is -- I think --
23 Commissioner Kladney, thank you very much. I think
24 that the rule on waiver does not require unanimity.
25 It has been a practice I believe in us, but unless

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1 the staff director contradicts me, I do not believe
2 there's a unanimity requirement for waiver, only
3 majority vote, as with any other privilege motion.

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

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

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

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

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

17 MS. MULDER: I already emailed it.

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

20 COMMISSIONER YAKI: Yes, Commissioner Adegbile.

21 COMMISSIONER ADEGBILE: My view is that part of
22 the difficulty we're having is that we are trying to
23 proceed, as I have said, and as Commissioner Kladney
24 has echoed, on very specific and detailed
25 administrative law rulemaking without adequate time

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1 to consider and review the documents and that
2 whatever may be said about practices with respect to
3 waiver of time and circulation rules, I am not aware
4 that those rules have ever been waived, certainly not
5 while I've been on the Commission, in the context of
6 this type of administrative rulemaking.

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

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

24 COMMISSIONER KLADNEY: Commissioner Yaki, Dave
25 Kladney again.

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1 COMMISSIONER YAKI: Commissioner Kladney?

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

10 COMMISSIONER YAKI: So you would like to --

11 COMMISSIONER KLADNEY: It may --

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

18 COMMISSIONER KLADNEY: That is correct. That is
19 correct, Commissioner Yaki.

20 COMMISSIONER YAKI: Is there a second for that
21 motion?

22 COMMISSIONER ADEGBILE: Seconded.

23 COMMISSIONER YAKI: Okay. There's a second by
24 Commissioner Adegbile to vote on the substitute
25 motion by Commissioner Kladney. Is there discussion

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1 on the motion?

2 COMMISSIONER ADEGBILE: Yes, Commissioner --

3 COMMISSIONER YAKI: Commissioner Adegbile?

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

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

10 COMMISSIONER HERIOT: Mr. Chair?

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

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

22 COMMISSIONER YAKI: Mr. Staff Director?

23 MR. MORALES: Yes, that's a good question. This
24 is a novel question. I don't think we've ever come up
25 with a situation like this where we've requested a

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1 general counsel to make an immediate legal opinion on
2 something that's as novel as this and new.

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

6 COMMISSIONER YAKI: Thank you.

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

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

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

24 COMMISSIONER CANTU: May I be recognized? This is
25 Norma.

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1 COMMISSIONER YAKI: Commission Cantu?

2 COMMISSIONER CANTU: Yes, we have had a problem
3 getting language exchanged between the caucuses, and
4 that has led to delay, but I do agree and I do
5 completely empathize with commissioners. I don't like
6 to be rushed either. However, I don't believe it would
7 take a full month, that we are in -- I'm keeping
8 track; we are in week nine of Norma not participating
9 as Chair, but we're really in week 12, starting with
10 13 of not having a chair. And adding another four
11 weeks to that I think is a problem with so many
12 important things happening involving civil rights and
13 no ability to vote on it as a Commission without a
14 chair.

15 COMMISSIONER ADEGBILE: Commissioner Yaki, may
16 I --

17 COMMISSIONER CANTU: But --

18 COMMISSIONER YAKI: Commissioner Adegbile?

19 COMMISSIONER CANTU: I'm sorry.

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

23 (Simultaneous speaking.)

24 COMMISSIONER CANTU: No, I was done.

25 COMMISSIONER YAKI: She's finished,

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1 Commissioner. Commission Adegbile, you're
2 recognized.

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

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

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

20 So I would like to direct the general counsel
21 and the executive director of the Commission to this
22 AI. It is this judgment and interpretations on the
23 fly that is the gravamen of the concern that I'm
24 raising and that Commissioner Kladney is raising that
25 the work has not been done to be prepared to take

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1 this vote in a thoughtful and appropriate way
2 consistent with our legal obligation, and I would
3 urge that some version of Commissioner Kladney's
4 motion be accepted.

5 COMMISSIONER YAKI: Thank you, Commissioner
6 Adegbile.

7 Do you have a formal request to amend
8 Commissioner Kladney's motion?

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

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

25 (No audible response.)

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1 COMMISSIONER YAKI: Kladney?

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

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

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

10 COMMISSIONER YAKI: That's what I just stated.

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

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

22 COMMISSIONER YAKI: Great.

23 Okay. So on the substitute motion, that motion
24 shall be that the agenda for today including the --
25 shall be carried over and revised to include the

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1 three -- the items read into the record today by
2 Commissioner Kirsanow shall be listed -- shall be
3 added to that agenda, that it shall be circulated in
4 written format in a timely fashion prior to that
5 meeting and it will be carried -- all of this will be
6 carried over to a special meeting to occur no sooner,
7 simply because of notice requirements, than two weeks
8 from now, but as soon thereafter for the purposes
9 of -- as the substitute motion.

10 Is there a second for that?

11 COMMISSIONER ADEGBILE: Commissioner Yaki?

12 COMMISSIONER YAKI: Commissioner Adegbile?

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

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

23 But yes, this would -- the -- let me state this
24 motion very clearly: The substitute motion to
25 Commissioner Kladney's motion to substitute for

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1 Commissioner Kirsanow's original motion is this: We
2 shall carry over this agenda and revise it to include
3 the three written AIs read by Commissioner Kirsanow
4 today into the agenda. Those AIs shall be written and
5 distributed to the entire Commission including the
6 staff director and the general counsel prior to that
7 meeting.

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

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

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

18 COMMISSIONER ADEGBILE: Second. Commissioner
19 Adegbile.

20 COMMISSIONER YAKI: A second by Commissioner
21 Adegbile.

22 Is there any discussion on this motion?

23 Commissioner Heriot? Commissioner Kirsanow, any
24 discussion?

25 (No audible response.)

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1 COMMISSIONER YAKI: If not the, substitute
2 motion --

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

5 COMMISSIONER YAKI: Commissioner Cantu?

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

12 COMMISSIONER YAKI: Commissioner, let me answer
13 that.

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

20 COMMISSIONER KLADNEY: To be clear, that includes
21 the vote on the chair, correct?

22 COMMISSIONER YAKI: Yes, it's the -- yes. Yes, it
23 includes the vote on the chair.

24 Should any commissioner wish to add additional
25 items to that agenda, it would have to follow regular

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1 order, which means that since there is no chair to
2 put anything on the agenda, it would have to be
3 brought up and voted on at the time of the Commission
4 meeting itself. It would have to be noticed. There
5 would have to be -- it would follow the 48-hour rule,
6 all those other sorts of things.

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

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

16 COMMISSIONER CANTU: Thank you.

17 COMMISSIONER KIRSANOW: Any further discussion?

18 (No audible response.)

19 COMMISSIONER YAKI: Let's call the roll.

20 COMMISSIONER KIRSANOW: Commissioner Yaki, how do
21 you vote?

22 COMMISSIONER YAKI: In -- on -- let's phrase the
23 motion. For the substitute motion offered by
24 Commissioner Yaki, you're calling the roll.
25 Commissioner Yaki votes aye.

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1 COMMISSIONER KIRSANOW: Commissioner Kladney?

2 COMMISSIONER KLADNEY: Yes.

3 COMMISSIONER KIRSANOW: Commissioner Adegbile?

4 COMMISSIONER ADEGBILE: Aye.

5 COMMISSIONER KIRSANOW: Commissioner Cantu?

6 COMMISSIONER CANTU: Yes.

7 COMMISSIONER KIRSANOW: Commissioner Heriot?

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

11 COMMISSIONER KIRSANOW: Commissioner Gilchrist?

12 COMMISSIONER GILCHRIST: Aye.

13 COMMISSIONER KIRSANOW: Commissioner Adams?

14 COMMISSIONER ADAMS: Yes.

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

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

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

21

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