

UNEDITED

U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, OCTOBER 18, 2024

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The Commission convened via Teleconference at
10:00 a.m. EDT, Rochelle Garza, Chair, presiding.

PRESENT:

ROCHELLE GARZA, Chair

VICTORIA NOURSE, Vice Chair

JOHN CHRISTIAN ADAMS, Commissioner

STEPHEN GILCHRIST, Commissioner

GAIL HERIOT, Commissioner

MONDAIRE JONES, Commissioner

PETER KIRSANOW, Commissioner

GLENN D. MAGPANTAY, Commissioner

MAURO MORALES, Staff Director

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STAFF PRESENT:

PAMELA DUNSTON, Chief, ASCD

DAVID GANZ, General Counsel & Parliamentarian

JULIAN NELSON, ASCD

ESSENCE PERRY, ASCD

MICHELE YORKMAN-RAMEY, ASCD

PETER CZAPLICKI, ACS CART Service Provider

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P R O C E E D I N G S

(10:09 a.m.)

CHAIR GARZA: Good morning, everyone.
Let's go ahead and get started. This business meeting of the U.S. Commission on Civil Rights comes to order at 10:10 a.m. Eastern Time on Friday, October 18th, 2024. This meeting is taking place via telephone.

I'm the Chair of the Commission, Rochelle Garza. I'd like to go ahead and get this started with a roll call, so please confirm your presence when I say your name.

Vice Chair Nourse?

VICE CHAIR NOURSE: Present.

CHAIR GARZA: Commissioner Adams?

COMMISSIONER ADAMS: Here.

CHAIR GARZA: Commissioner Gilchrist?

COMMISSIONER GILCHRIST: I'm present.

CHAIR GARZA: Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

CHAIR GARZA: Commissioner Jones?

COMMISSIONER JONES: Present.

CHAIR GARZA: Commissioner Kirsanow?

I do not hear Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Sorry. I was muted. I'm here.

1 CHAIR GARZA: Okay. Good morning.
2 Commissioner Magpantay?

3 COMMISSIONER MAGPANTAY: I'm here.

4 CHAIR GARZA: Okay. Great. Thank you.

5 Based on that roll call, we have a quorum of
6 Commissioners.

7 Is the court reporter present?

8 COURT REPORTER: Yes, I am present.

9 CHAIR GARZA: Okay. Is the Staff Director
10 present?

11 MR. MORALES: Yes, I am present.

12 CHAIR GARZA: Is the Parliamentarian
13 present?

14 MR. GANZ: I'm present, yes.

15 CHAIR GARZA: Okay. Good morning.

16 I. APPROVAL OF AGENDA

17 CHAIR GARZA: So now we're going to
18 proceed with today's agenda as posted on the Federal
19 Register. We will consider the following:
20 presentations by the New Hampshire, South Dakota, and
21 Tennessee State Advisory Committee Chairs, followed by
22 the Staff Director's report. Commissioner Heriot did
23 request to add a vote on the following Advisory
24 Committees to the agenda for the October business
25 meeting: Montana, Maryland, Rhode Island, New Jersey,

1 and West Virginia. However, under the revised Federal
2 Advisory Committee Act, FACA, regulations, that
3 request is out of order.

4 Are there any motions to amend the current
5 agenda?

6 COMMISSIONER HERIOT: I just want to
7 register my objection to that.

8 CHAIR GARZA: So noted.

9 Hearing none, we're going to go ahead and
10 move to consider the first agenda item. Just to
11 confirm, do we have Chair Boggis on?

12 I do not hear Chair Boggis. So what we're
13 going to do is we'll move the presentations around,
14 but before we go ahead and do that, I do want to kind
15 of set the stage for what we're going to hear today
16 from the Advisory Committee Chairs.

17 We're going to hear from the Chair of
18 three of our Advisory Committees. As we know, these
19 Advisory Committees serve as the eyes and ears on the
20 ground to identify and elevate civil rights concerns
21 from the local to the national level. Their
22 dedication to uncovering inequity and recommending
23 actionable solutions is crucial for promoting justice
24 and equality across the nation.

25 We are deeply grateful to have the Chairs

1 of these Committees as our guests to present upon the
2 texts of their reports that have been voted upon by a
3 majority of their Committees.

4 So, before we hear from our guests today,
5 I'd like to highlight the purpose of the presentations
6 is to hear from the Advisory Committees'
7 representatives about what they voted upon and
8 recommended as a Committee based on the testimony they
9 gathered. Again, we deeply appreciate your presence
10 and your ability to represent your Committees'
11 findings and recommendations.

12 Additionally, I want to emphasize that
13 while some statements made today may be controversial,
14 we ask that all remarks remain respectful. And as
15 Chair, I will step in if comments become defamatory or
16 off topic. We appreciate our Advisory Committee
17 Chairs sharing their insights today.

18 Given that the New Hampshire Advisory
19 Committee Chair does not appear to be on the call at
20 this moment, we're going to go ahead and move on to
21 our voting rights presentations that we're going to
22 hear from South Dakota and Tennessee.

23 So, as we prepare to hear from them about
24 their investigations into voting rights, I want to
25 stress how timely this conversation is with the

1 presidential election already underway and early
2 voting in full swing. In fact, Georgia just saw a
3 record number of ballots cast on the first day of
4 early voting this week with over 328,000 votes,
5 surpassing previous records. This highlights the
6 urgency of ensuring that voting rights are protected,
7 especially as millions of Americans are already
8 heading to the polls.

9 I also want to shed light on an issue
10 happening right now in my home state of Texas.
11 Recently, Governor Abbott announced the removal of one
12 million individuals from the voter rolls, including
13 6,500 individuals alleged to be noncitizens. However,
14 investigations revealed that many of these were in
15 fact U.S. citizens mistakenly purged for not
16 responding to letters about their citizenship.

17 This has led to confusion, distrust in the
18 voter registration process, and potential
19 disenfranchisement. Removing citizens from voter
20 rolls without proper notification is a serious threat
21 to democratic participation.

22 So today we're going to hear from our
23 Chairs about their investigations into the impact of
24 barriers like geographic isolation and the digital
25 divide disproportionately impacting Native American

1 voters, who often face long travel distances for
2 voting services. We will also hear how systemic
3 issues, such as border ID laws and difficulties
4 accessing registration materials, impact marginalized
5 groups.

6 These examples show just how varied and
7 persistent challenges to voting rights remain
8 nationwide, underscoring the importance of
9 safeguarding the most fundamental right in our
10 democracy: the right to vote.

11 So now I'm going to turn it over to South
12 Dakota Advisory Committee Chair, Travis Letellier, on
13 the Committee's report, Voting Rights and Access.

14 Thank you, Chair Letellier, for joining
15 us. The floor is yours.

16 II. BUSINESS MEETING

17 A. PRESENTATION BY SOUTH DAKOTA ADVISORY COMMITTEE

18 CHAIR ON RELEASED REPORTS AND MEMORANDUM

19 ON VOTING RIGHTS AND ACCESS

20 MR. LETELLIER: Good morning,
21 Commissioners, and thank you, Madam Chair. Can you
22 hear me okay?

23 CHAIR GARZA: Yes, we can.

24 MR. LETELLIER: Oh. Okay. Thank you.
25 Good morning. I am Travis Letellier, Chair of the

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South Dakota Advisory Committee. I use he/him pronouns. Today I will be presenting the findings of our report, Voting Rights and Access in South Dakota, which was completed and voted upon by the Committee on May 8th, 2023.

The report was approved by a roll call vote of six ayes, zero nays, and one abstention due to that member having been absent from our previous discussion of the report's Recommendations section. The report was subsequently published in July 2023, and I'd like to offer my appreciation and thank our Advisory Committee members for the amazing work they did during the four years of their terms.

Our Committee took up this issue because ensuring equal access to voting is a critical issue for safeguarding the civil rights of all South Dakotans. The voting access topic received eight out of nine votes from our Committee members, and this topic was enthusiastically embraced in part because it is well within the jurisdiction of our Committee.

The Committee chose to focus exclusively on three underserved populations: American Indians, people with disabilities, and non-English speakers. The state of South Dakota shares geographic boundaries with nine federally recognized tribes, and our

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Committee members wanted to dig into the experiences and hurdles faced by tribal members when they vote or try to vote in local, state, and federal elections.

Several Committee members shared anecdotal evidence of tribal members who had faced barriers when attempting to vote or who didn't vote at all due to a wide variety of reasons. So making this the topic of our report was an effective way for us to elevate these concerns, formalize some of these findings, and offer a space to listen to the lived experiences of South Dakotans.

Public testimony was taken during the summer and fall of 2022 from private individuals and experts in the three impacted populations we focused on. And again, that's non-English speakers, people with disabilities, and American Indians living on tribal lands. Testimony was taken from the following constituencies. We heard from researchers and academics, nonprofit organizations, attorneys and those in the legal community, policymakers and political leaders, as well as from impacted individuals.

We compiled numerous findings, especially with respect to the experiences of American Indians living on tribal lands. And from testimony, we heard

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one significant area of concern, and that was the voting process itself.

For American Indians living on tribal lands in South Dakota, the difficulty in traveling long distances to voting locations was their number-one obstacle to voting. And this was compounded by the lack of satellite locations to reduce the traveling burden, the lack of access to post offices on tribal lands where a voter could even receive an absentee ballot, and the fact of life that many tribal members have nonstandard mailing addresses where either their absentee ballots didn't arrive to the right place or the county auditor couldn't tell which polling precinct to put the voter in in order to send them the proper ballot.

Two additional findings regarding the American Indian constituency should be mentioned. There's significant confusion about voter identification. An ID is required to vote, but if you don't have one when you show up to vote, you can fill out an affidavit on the spot, and you are still allowed to vote. And there was confusion not only over the affidavit process itself but whether or not tribal IDs would be generally accepted to vote.

There was also concern with a lack of

1 appropriate poll worker training for when people
2 showed up and they did not have IDs with them. So
3 sometimes there was confusion over whether the poll
4 worker wasn't sure how the affidavit process worked or
5 circumstances where the poll worker turned away a
6 person without an ID, telling them they couldn't vote,
7 because the worker didn't understand the procedures.

8 These findings of American Indians
9 attempting to vote predominated our findings. And
10 then, from our other two focus communities -- non-
11 English speakers and people with disabilities -- their
12 concerns were quite similar to each other. For both
13 of these populations, a lack of appropriate training
14 of the poll workers was especially prevalent. And
15 this includes a lack of training on how to translate
16 ballots into a language other than English, including
17 into Native languages, or how to work the voting
18 machines for people who are visually impaired.

19 We also heard a concern from people with
20 physical disabilities who reported privacy concerns --
21 for example, not being allowed to have someone assist
22 them with their ballots -- as well as physical access
23 concerns, where the courthouse or other polling
24 location was not ADA compliant or otherwise handicap
25 accessible.

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Based on these summary findings and the common themes we heard, the Advisory Committee put forth the following recommendations to help address the issues we heard about. Number one, with respect to voter ID confusion and confusion on how to use the affidavit process, the Committee recommended the South Dakota Secretary of State develop a simple one-page infographic on how to vote.

And I do have an update here. I have since seen a graphic just as the Committee described showing up around the state. And the Secretary of State has distributed How to Vote With and Without an ID flow charts that are visible and prominently placed in auditors' offices and polling locations. So I'm happy to report that development.

Number two, with respect to the distance to polling and satellite locations, the Committee recommends utilizing HAVA funding -- Help America Vote Act -- HAVA fundings to create satellite offices to offer in-person voting services on reservation land, of course with the approval and by working together with the respective tribes.

The Committee also recommends that Congress amend HAVA reimbursement rules to allow counties to be reimbursed for providing prepaid

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postage on absentee ballots and voter registrations. South Dakota does not provide postage-paid ballots, and this is a request we heard from county auditors who were concerned with the cost-prohibitiveness of mailing out absentee ballots with prepaid postage included.

Number three, with respect to non-English speakers, the Committee recommends that the South Dakota Legislature repeal any South Dakota state law impeding or prohibiting the translation of ballots in languages other than English, and the Committee recommends that Congress amend the HAVA reimbursement administrative rules to allow county reimbursement for ballot translating services.

And lastly, number four, with respect to people with disabilities who reported accessibility concerns, there were sometimes physical barriers such as courthouses not being wheelchair accessible. So the Committee recommends local municipalities and county Commissions consult with area nonprofits for guidance in applying for infrastructure grants that could be used to make polling locations and registration sites ADA compliant.

Also, because the size and the fonts used to post voting instructions and locations are

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sometimes either in too small of a font or placed in too high of a location for people with print or visual disabilities to be able to read, it's important for poll workers to be mindful of the placement of the signage.

As I conclude, I am so grateful to work with this team of Advisory Committee members. They are dedicated to listening to South Dakota residents, hearing their stories, and elevating these lived experiences of South Dakotans.

Our report on voting rights and access in South Dakota is critical to understanding the physical and political barriers that tribal members, non-English speakers, and people with disabilities face when they engage with the voting process. I hope our findings and recommendations will contribute to positive reforms. Thank you very much for your time this morning, and I welcome your questions if you have any.

CHAIR GARZA: Thank you so much, Chair Letellier, for that presentation.

I welcome other Commissioners to go ahead and raise their hands; indicate that you have a question for the Chair. If not, I will take the Chair's privilege and ask a question.

1 Okay. I see Commissioner Magpantay.
2 Before I call on you, Commissioner Magpantay -- Chair
3 Letellier, can you give us an idea of what kind of
4 distances we're talking about, just to orient us in
5 understanding the challenges that folks are facing in
6 accessing a polling location?

7 MR. LETELLIER: Yes. Thank you, Madam
8 Chair.

9 Let me see if I have a good -- we were
10 provided, for example, some visual -- kind of like
11 Google Map satellite locations. For example -- I'm
12 trying to find a good statistic here. It looks like
13 -- I mean, for example, some of our reservations in
14 South Dakota exceed 2,000 square miles. And so we
15 could be talking anywhere from a county -- it could be
16 as close, maybe as close, as 50 miles to your local
17 county seat from a reservation house or location, or
18 it could be hundreds of miles.

19 So I would say anywhere between 50 miles
20 to 200 miles. Specifically, I gave one quick update
21 in my report, but I'd like to offer another update on
22 the same topic of polling distances. The U.S.
23 Attorney's Office in the District of South Dakota is
24 working to make all counties accessible with respect
25 to their polling locations for Election Day.

1 And the example that I heard from the U.S.
2 Attorney's Office is that one of our counties, Bennett
3 County, only had one polling location in Martin, South
4 Dakota, in the entire county. And that made traveling
5 there infeasible for many residents, tribal members as
6 well as non-tribal members who just lived far out of
7 town.

8 Bennett County has since opened an
9 additional satellite office that would decrease that
10 traveling distance in advance of the November general
11 election. And so I would like to take this
12 opportunity and give credit to the U.S. Attorney's
13 Office and to Bennett County for taking the lead in
14 this type of initiative and addressing this concern in
15 a proactive and successful way leading up to the
16 general election.

17 CHAIR GARZA: Thank you for that. I'm
18 glad to hear that some movement and some changes have
19 happened. But just to kind of reiterate what you just
20 said, you're saying it's anywhere between 50 to 250
21 miles to get to a polling location. We're talking
22 about --

23 (Simultaneous speaking.)

24 MR. LETELLIER: I'm sorry.

25 CHAIR GARZA: We're talking about at least

1 maybe an hour drive, 45-minute drive, on the short end
2 to a much longer drive on the longer --

3 MR. LETELLIER: And that's compounded by
4 if you have transportation, if you have childcare, and
5 if you can take work off.

6 CHAIR GARZA: Yeah. All of those things
7 that are factored in. I mean, I'm a Texan, and I know
8 how long driving distances are. And if I had to drive
9 four hours, get childcare for my two kids, I mean,
10 it's nearly impossible. And that's even having access
11 to a car.

12 So thank you for coloring that in for us.
13 I know personally that I find that very striking and
14 concerning. So I'm going to go ahead and call on the
15 folks that have their arms up -- or hands up. I
16 apologize.

17 Commissioner Magpantay, we'll start with
18 you, and then we'll go to Commissioner Jones.

19 COMMISSIONER MAGPANTAY: Thank you so
20 much, Rochelle.

21 And thank you, Chair, for this. I learned
22 about some of the voting problems in Indian country
23 from my colleague Laughlin McDonald at the ACLU. And
24 I think it would be -- when you reference some of
25 these cases, I think it would be appropriate to

1 recognize his work in addition to the work that all of
2 you had done, with a bravo and congratulations. Much
3 gratitude.

4 You had mentioned that you looked at
5 language minorities, and I did read the report
6 carefully. There's no Section 203 language assistance
7 requirement. But there is Section 208 of the Voting
8 Rights Act, which allows voters to bring an assister
9 of choice who can be an interpreter, as long as it's
10 not their employer or union representative, who can
11 translate the ballot for them if they have an
12 inability to speak English.

13 May I ask, what are the languages in South
14 Dakota where voters, if they want to bring their own
15 interpreter, can bring their interpreter under 208 --
16 what languages would be needed? Question mark.
17 Thanks.

18 MR. LETELLIER: Thank you. Thank you,
19 Commissioner. I believe that the primary non-English
20 languages that would be of concern would be probably
21 Spanish for our larger metropolitan areas in South
22 Dakota -- Sioux Falls, Rapid City. Our larger urban
23 areas in the state have quite a few Spanish speakers.
24 And then, when you move to reservation lands, tribal
25 lands, which is throughout the entire state of South

1 Dakota, I would say probably the Lakota language is
2 one of the most prominent Indigenous languages spoken.

3 I would limit my answer to saying Spanish
4 and Lakota are the two primary languages. We have --
5 there is a significant number -- I don't want to put
6 a percent on it -- of tribal households that have
7 family members who only speak Lakota, where that
8 Native language is the only language spoken in the
9 household. And so I would say Spanish and Lakota are
10 the two primary non-English languages.

11 COMMISSIONER MAGPANTAY: Thank you very
12 much.

13 CHAIR GARZA: We'll go ahead and go to
14 Commissioner Jones.

15 COMMISSIONER JONES: Thank you, Madam
16 Chair.

17 And thank you so much for your leadership
18 in South Dakota, my friend. The question I wanted to
19 ask is, with early voting underway, are there any
20 identified issues regarding accessibility or voter
21 confusion that need to be addressed immediately to
22 ensure a fair election, from your perspective?

23 MR. LETELLIER: Thank you, Commissioner.
24 I will -- if I may, I'd like to clarify one small
25 issue just for the record. In the state of South

1 Dakota, we do not have early voting. We have absentee
2 voting where people are allowed to vote absentee; I
3 believe it's almost 40 days before the election.

4 So, if you read our report and you look at
5 South Dakota state statutes or the Secretary of
6 State's website, you will not see any mention of early
7 voting because, technically, in South Dakota, that's
8 just not what it's called. It's called absentee
9 voting. So I do want to just make sure that I'm using
10 the language correctly.

11 And then, with respect to your question
12 about if we are seeing any early signs of voter
13 confusion of issues or problems with voting,
14 anecdotally, I have personally not yet heard of any.
15 I think because the absentee voting process begins so
16 early in South Dakota, people have an opportunity to
17 either go physically to their polling -- their county
18 seat, their courthouse, to vote at a leisurely pace,
19 I'll say. And then, of course, we see a spike on
20 Election Day itself with everybody showing up.

21 Our Secretary of State in South Dakota --
22 she has done what I think is a nice, effective job of
23 making sure that access to the ballots and engaging in
24 the franchise is accessible to everybody that wants to
25 vote or participate in the process. Our Secretary of

1 State did campaign kind of on an election integrity
2 platform, and I think she's approached this topic in
3 a very practical and effective way with an eye toward
4 these -- I don't know if you'd call them voting
5 deserts, but with an eye toward these physical
6 barriers to traveling to local polling places.

7 So, to answer your question directly, I
8 personally have not heard of any preliminary problems.
9 I know we have a lot of allies and nonprofits
10 throughout the state that are boots on the ground that
11 are looking for problems, that are engaging with
12 voters as they go vote to make sure that the process
13 is safe and smooth.

14 But so far, I'm happy to say that I think
15 the voting process in South Dakota, other than the
16 physical barriers, which is a hard hurdle to clear,
17 has been very effective.

18 COMMISSIONER JONES: Thank you.

19 CHAIR GARZA: Well, thank you so much,
20 Chair Letellier, for your presentation, for outlining
21 all of the challenges that the Committee looked at and
22 identified and made recommendations around. I'm very
23 appreciative of your time. So I want to give you a
24 last word before we move on, but thank you again for
25 your work on this state Advisory Committee.

1 MR. LETELLIER: Thank you, Madam Chair.
2 I appreciate the opportunity to speak today, and
3 thanks again. I am deeply, deeply grateful for the
4 South Dakota Advisory Committee members. They are an
5 incredibly collegial and competent and passionate
6 group, and I'm very, very lucky to work with them.
7 Thank you for inviting me this morning.

8 CHAIR GARZA: Well, we were happy that you
9 were able to join. Thank you so much.

10 We're going to go ahead and move on with
11 another presentation. We're going to hear from the
12 Tennessee Advisory Committee Chair, Shaka Mitchell, on
13 the Committee's report, Civil and Voting Rights.

14 Thank you, Chair Mitchell, for joining us.
15 The floor is yours.

16 B. PRESENTATION BY TENNESSEE

17 ADVISORY COMMITTEE CHAIR ON RELEASED REPORTS AND

18 MEMORANDUM ON CIVIL AND VOTING RIGHTS

19 MR. MITCHELL: Thank you, Chair Garza and
20 other members of the Commission. I am Shaka Mitchell.
21 I'm the State Advisory Committee Chair, the outgoing
22 Chair, in Tennessee. And certainly, I want to give a
23 word of appreciation and thanks to fellow Committee
24 members and also to USCCR staff, Victoria Moreno and
25 Corrine Sanders in particular, who were both

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especially helpful as we worked to pull this report together.

My presentation is really going to be a sprint because this report was developed in two parts, one focusing on the civil rights effects of a state law passed in 2020 and the other focusing on access to voting during the pandemic. Now, the two focus areas, though, are linked not only by a common time period but also because they speak to broader questions of political engagement in the franchise as well as impacting the legitimacy of and access to the political process in the volunteer state.

So I'm going to take them in two parts. Part 1 focuses on a law that passed that was -- I'll refer to it as SB-8005, Senate Bill 8005. And then I'll turn to the ballot access piece.

SB-8005 was passed in August 2020, and it imposed criminal penalties on certain acts of protesting. And this occurred during the summer of -- the so-called summer of racial reckoning, when we saw protests nationwide. Tennessee was included, of course, in states that saw those protests, including a months-long demonstration known as the People's Plaza that took place outside the state capitol, in which protesters' demands included meeting with the

1 Governor to speak about issues including police
2 brutality.

3 Well, this sparked concerns among
4 legislators that this was the beginning of an
5 autonomous zone as occurred in the Seattle area.
6 Legislators then passed SB-8005, which enhanced the
7 criminal penalties of camping on state property from
8 a misdemeanor to a Class E felony, which can result in
9 up to six years in prison and the loss of voting
10 rights.

11 The legislation, now law, also requires a
12 12-hour hold, holding period, for anyone arrested,
13 which Panelists commented is more severe than holds
14 for arrests under other violations that are registered
15 as Class E felonies.

16 Some of the findings included, of course,
17 the enhancement of criminal penalties. We heard why
18 legislators thought this was necessary and then others
19 who commented that this was impacting the right to
20 free speech.

21 We found that several aspects covered by
22 SB-8005 were already covered by existing laws, such as
23 those related to vandalism, trespassing, and impeding
24 traffic, say. Other findings concerned the way in
25 which the law was passed, and our Committee

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highlighted concerns on the rushed passage of this law, which was hotly debated during a special session that lasted only three days during the summer. It's the minimum amount of time allowed by the state Constitution.

Some panelists also alleged that there was disparate treatment between these protesters as compared to others in the state, suggesting perhaps that because the majority of those participating were young people and people of color that there might have been a different treatment of this particular protest.

We found that there was a chilling effect of this law passing. Panelists described the effect that resulted immediately after the passage of the law, potentially due to the fear of criminal penalties that it could impose. For instance, we heard from a law student at Vanderbilt who decided to leave the protest out of fear of being arrested and not being eligible for eventual licensure. I know there are many lawyers on the Commission. I myself am one, and that certainly would have represented a legitimate fear to many of us while in law school.

Some Panelists saw this as an attack on free speech if this chilling effect caused a misunderstanding among young people and threatened

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their civic engagement -- or a chilling effect of the law, I should say. And then, finally, the last two findings concerned disenfranchisement and then discretion with how the law is enforced.

On disenfranchisement, Tennessee has the second-largest population of individuals already disenfranchised due to felony convictions. That equals about nine percent of Tennessee's voting population and 20 percent among Black adults. While the state does have mechanisms to restore voting rights, these are often complicated to navigate, as has been noted in other reports from this Advisory Committee.

On the matter of discretion, it was unclear how discretion could be used to enforce this law. For instance, according to one of the Panelists, the law's language lacked specificity on what constitutes camping on state property. A lawmaker who voted for the law, for the bill, and is in fact himself a lawyer explained that his understanding is that activity would also become felonious if a person is asked to leave and they refused. So there's some ambiguity about how the law itself is interpreted and enforced.

Our Committee respectfully requests that

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this Commission take a number of steps. I won't detail them, but I will just highlight a few. We request that the Commission condemn legislation that may be enforced selectively and/or applied based on the underlying speech's content.

We would also ask that you encourage the state Legislature to collect information about arrests and prosecution under this law, with particular attention to disparate impact on federally protected classes.

Finally, we would ask that you request the Tennessee General Assembly consider some other recommendations that include repealing the 12-hour hold and felony enhancement that -- consider passing legislation meant to clarify this law's broad language, including defining terms, camping and marking, among others; and consider, to the extent not already required by law, requiring local and state law enforcement to clearly identify themselves as officers when conducting arrests.

Finally, we believe that this Commission -- or we recommend that the Commission submit a formal request to the Tennessee Governor to veto legislation that limits voting access when the legislation passes during a special legislative session, as restricting

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the right to vote seems to require greater deliberation than 72 hours of a special session.

Now I'll quickly move to Part 2 of our report, which is Access to Voting During the Pandemic. And then I'm happy to take any questions or give any clarifying remarks.

Tennessee saw record-breaking voter turnout for the 2020 general election, including absentee voting. But despite this, voter turnout was still well below the national average and, since 2020, ranks among the lowest in the nation.

While many states loosened their voting procedures in 2020, Tennessee maintained some of the most restrictive voting rules in the country. Our Committee found that Tennessee ranks as the fourth most restrictive state in terms of access to voting and is one of 16 excuse states, which requires voters to provide an excuse as to why they must vote absentee. In 2020, there was a complex legal battle on whether the illness excuse would include COVID-19. While it was temporarily allowed, the Supreme Court installed the previous restrictions by the general election that November. So there was some -- the legal wrangling caused quite a bit of confusion among voters in Tennessee.

1 Tennessee also allows mail delivery of
2 absentee ballots but not hand delivery, nor does
3 Tennessee allow drop boxes. Tennessee is the only
4 state that prohibits anyone who is not an election
5 commission employee from sharing an absentee ballot
6 application and classifies the sharing of the
7 application as a Class E felony. And although this
8 law has been challenged on the basis that its
9 resulting criminal consequences infringe on First
10 Amendment rights, it has been upheld by the Sixth
11 Circuit.

12 Tennessee, as I mentioned, is one of the
13 most restrictive states in regards to voting already,
14 but I just want to make a last quick note that one of
15 the things that we found is that there were indeed
16 positive examples of how local government responded to
17 the pandemic with respect to voting.

18 The Elections Administrator of Davidson
19 County shared, for instance, how his office
20 collaborated with public health officials to offer
21 safe voting options for voters who had tested
22 positive. They purchased equipment to help manage the
23 really unprecedented amount of absentee ballots.

24 At the same time, because responses to the
25 pandemic differed by county in Tennessee, there was a

1 great deal of confusion in other parts of the state,
2 such as Shelby County, where shifting procedures
3 disrupted ballot access, where updated information
4 couldn't be printed and mailed to voters in a timely
5 manner, resulting in lots of confusion.

6 So our Committee, again, respectfully
7 requests that the Commission consider this area of
8 concern as part of your attention to voting rights
9 nationally. And we've got a number of recommendations
10 that we would submit, but I'll just highlight a few.

11 They include submitting a formal request
12 to the Tennessee General Assembly to consider easing
13 voting access by decriminalizing the sharing of
14 absentee ballot applications. We would also recommend
15 implementing automatic voter registration and
16 providing more flexibility with the deadline to
17 register to vote.

18 And then we also recommend that this
19 Commission would submit a request to the Tennessee
20 Secretary of State to consider drop boxes or hand
21 delivery of absentee ballots, acceptance of a broader
22 variety of photo IDs, increasing precinct and poll
23 workers in communities of color, and then
24 standardizing the modes by which information about
25 ballot access is provided to voters throughout the

1 state, perhaps issuing clear guidelines and
2 instructions to local election officials so that
3 voters are more informed about how to access ballots.

4 We also believe that auditing and
5 providing public reporting on local collection agency
6 efficacy would be of tremendous benefit.

7 I will stop there, and I'm really
8 appreciative of the time and happy to answer any
9 questions of the Commissioners.

10 CHAIR GARZA: Thank you so much, Chair
11 Mitchell, for that presentation.

12 At this time, I'm going to open up the
13 floor to questions from Commissioners. Please raise
14 your hand digitally, and I'll call on you.

15 Vice Chair Nourse, I see your hand up.

16 VICE CHAIR NOURSE: Yes. Thank you so
17 much for this extraordinary report and for the work of
18 the Tennessee SAC Commission. As the Chair knows and
19 just commented earlier, the SACs are just a vital part
20 of the work of the Commission.

21 And we learned just recently about
22 problems in South Dakota from the last report, and now
23 we hear of this rather unusual law passed in
24 Tennessee. I mean, the time of COVID was very
25 difficult for people, and there were questions about

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how to deal with a lot of things. And happily, we have moved on. But I do think that you've -- this question about how that law is enforced is very important to follow up on.

Why? I mean, I'm sure the Sixth Circuit supported it. I can imagine -- I'm a law professor, so I can geek out about it, but I won't. But I do think there's something really, truly appalling about a law that is essentially intended to disenfranchise people by making it a felony as opposed to a misdemeanor. And there are statements in the record to that effect, and that is a very disturbing phenomenon, in my view.

So I want to thank you for reporting it to us, and I want to make sure that we will take this seriously. I do think that it's important, and I will send my own letter, if no one else wants to do it, to the Legislature to try to develop that data because I think it's very, very important as these things move forward.

It's been sort of a trend around the country to use camping ordinances to suppress speech. Supreme Court just upheld one against a cruel and unusual punishment challenge. But I think that these things do need clarification so that we do not rush to

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judgment.

And I really hope -- I wish you success in getting some clarity on the law, as well as getting some data on how it's being enforced. So thank you very much.

MR. MITCHELL: Thank you, Commissioner Nourse.

CHAIR GARZA: Chair Mitchell, I do have one question just kind of fleshing out SB-8005. Has the passage of that affected voter turnout and engagement, especially among communities impacted by protest-related disenfranchisement?

MR. MITCHELL: Thank you for the question, Chair. Currently, we don't have much data. This will be the first, obviously, presidential election just here in a few weeks since that law really went into great effect. So we don't have much data.

We do know that -- and we documented it in our report -- that there have not been many arrests and prosecutions that we're aware of under this law statewide. But again, that information is pretty hard to gather because it requires gathering it from District Attorneys across the state.

So we're not quite sure what the impact is. And as is often the case in these instances,

1 trying to measure the absence of activity just proves
2 really challenging, right? And so it's hard to know
3 how many people -- as we heard from the Vanderbilt law
4 student, it's hard to know how many people simply stay
5 at home for fear of coming out. And that's, in part,
6 the nature of a law that may have a chilling effect.

7 We did hear from -- in fact, the only
8 lawmaker who voted in favor of the bill who provided
9 testimony to our Panel informed us that the goal was,
10 in fact, to have people leave and go home. And we
11 thought that that was a pretty telling response from
12 him. Likewise, it was telling that he was the only
13 person out of a majority, super majority, of
14 legislators who voted for the law -- none were willing
15 to -- or willing or able, I should say, to come and
16 offer their explanations as to why they felt it was so
17 necessary.

18 So that's a roundabout way to say we don't
19 have nearly the data that we'd like. And I'm not sure
20 of how we would measure that, entirely.

21 CHAIR GARZA: Well, I appreciate you
22 trying to answer the question. And yes, it does sound
23 like there is a gap in data and really understanding
24 how you go about gathering it. So maybe in a
25 subsequent report or in the future, it's something

1 that could be explored.

2 I just want to say thank you again for
3 being here. I don't see that anyone else has
4 indicated they have a question, so I just want to give
5 you the last word before we move on.

6 MR. MITCHELL: Well, thank you, Chair and
7 other Commissioners. I think I really do want to
8 highlight that -- the hard work by the Tennessee State
9 Advisory Committee. I want to note that while there
10 was a dissent filed, and that's obviously part of the
11 report, there was wide consensus, a broad consensus,
12 on most of the recommendations, which are pretty
13 extensive and thorough.

14 But I will say, as a member who's served
15 on this Committee for a number of years, like many of
16 you, I have been struck by the diminishing number of
17 unanimous votes that our Committees have held. In
18 recent years, these votes for things that five years
19 ago would have been almost pro forma are now very
20 often contentious.

21 And we would encourage, actually, the
22 Commission looking into that phenomenon nationwide to
23 see if that is unique to Tennessee or if it's
24 indicative of a larger trend of mis- and
25 disinformation that creeps even into these important

1 proceedings. But we do believe that our report
2 hopefully will shed some light on what's happening in
3 Tennessee and appreciate your attentiveness to it. So
4 thank you.

5 CHAIR GARZA: Well, thank you very much,
6 Chair Mitchell. Appreciate you being here and for
7 your work on the Tennessee Advisory Committee.

8 We're going to go ahead and move on to the
9 last item that we have. Just to note for the record,
10 Chair Boggis from the New Hampshire Advisory Committee
11 to report on the solitary confinement report that the
12 Committee did is unavailable and was unable to join us
13 this time, so we'll go ahead and reschedule that for
14 another time.

15 And turning to our last agenda item is
16 regarding the Staff Director's report.

17 So, Staff Director Morales, we're going to
18 turn to you for your monthly report. The floor is
19 yours.

20 C. MANAGEMENT AND OPERATIONS

21 STAFF DIRECTOR'S REPORT

22 MR. MORALES: Thank you, Madam Chair.

23 In the interest of time, I have nothing
24 further to add that is not already contained in the
25 Staff Director's report provided to Commissioners. Of

1 course, I'm always available to speak to a
2 Commissioner about any matter in the report.

3 With that, thank you, and I have nothing
4 further.

5 CHAIR GARZA: Okay. Well, all right,
6 then. Thank you --

7 COMMISSIONER KIRSANOW: Madam Chair?
8 Kirsanow here. I have a question.

9 CHAIR GARZA: Yes, Commissioner Kirsanow?

10 COMMISSIONER KIRSANOW: Thank you. I read
11 an article dated October 2nd in NBC News that reports
12 that a bipartisan group of Congressmen sent a letter
13 to the Commission last month requesting that we
14 investigate, quote, the alarming increase in campus
15 anti-Semitism.

16 And the article states, quote, a
17 Commission spokesperson said that this request is
18 currently under review, end quote. Personally, I
19 wouldn't have known of this letter, nor the review,
20 had I not seen this report.

21 So I have a few questions. Who's
22 conducting the review? What's being reviewed? What
23 standards or parameters are being employed in the
24 review? And obviously, why wasn't this matter brought
25 to our attention or placed on the agenda?

1 CHAIR GARZA: Commissioner Kirsanow, I
2 appreciate you wanting to discuss this. We can
3 discuss it offline. We don't have any other agenda
4 items to tie that to at this point in time, but happy
5 to talk about this offline.

6 I think this actually concludes the
7 business that we have on the agenda. If we don't --
8 (Simultaneous speaking.)

9 COMMISSIONER ADAMS: It's a point of
10 parliamentary procedure. It's a point of
11 parliamentary procedure -- Adams. Point of
12 parliamentary procedure. We're in the Staff
13 Director's report. There's been no motion to adjourn,
14 and there's a pending question of the Staff Director.
15 Isn't that correct parliamentary-wise?

16 CHAIR GARZA: I don't believe that that
17 was how that was presented. Is that a question -- is
18 that a question for --

19 (Simultaneous speaking.)

20 CHAIR GARZA: Commissioner Adams, is that
21 a question for the Staff Director regarding the Staff
22 Director's report?

23 COMMISSIONER ADAMS: Point of
24 parliamentary procedure. Commissioner Kirsanow asked
25 a question of the Staff Director during the Staff

1 Director's report, and the Staff Director didn't get
2 to answer.

3 CHAIR GARZA: Okay. I don't believe that
4 that was a question that was asked of the Staff
5 Director.

6 Commissioner Kirsanow, is that how you
7 were framing this?

8 COMMISSIONER KIRSANOW: It was. The Staff
9 Director asked if we had any questions, and I said I
10 do have a question. And I recited this article that
11 I'd read that references the Commission and some
12 spokesperson who had told them this matter is under
13 review. And we're not aware of it. At least I
14 wasn't.

15 CHAIR GARZA: Staff Director Morales?

16 MR. MORALES: Yeah. I am not aware of
17 that. I will have to get back to you on that.

18 COMMISSIONER HERIOT: I don't understand.
19 You're not aware of the letter?

20 MR. MORALES: I'm not aware of the NBC
21 report.

22 COMMISSIONER HERIOT: But you're not aware
23 of the letter? The question's about the letter.

24 CHAIR GARZA: I'm going to --

25 MR. MORALES: And I did not respond.

1 CHAIR GARZA: I'm going to -- point of
2 order, our parliamentarian, is this an order? What do
3 we do here?

4 COMMISSIONER HERIOT: Of course it's an
5 order.

6 COMMISSIONER KIRSANOW: We simply asked a
7 question.

8 MR. GANZ: Yeah, I mean -- this is David,
9 just for the record, for the court reporter. Yeah, I
10 understand that there's a question regarding a news
11 report that relates to -- a news report mentioned
12 something about a, quote, investigation -- I'm doing
13 air quotes -- investigation. And the Staff Director
14 has stated that he is not aware of what is being
15 referred to in the news report.

16 Is that right, Mauro?

17 COMMISSIONER HERIOT: Not aware of the
18 letter? That seems rather unlikely.

19 MR. GANZ: Well, he stated -- he stated
20 that he's not --

21 (Simultaneous speaking.)

22 MR. MORALES: I said -- let me be clear.

23 CHAIR GARZA: Wait a minute.

24 MR. MORALES: Let me be clear so people
25 don't put words in my mouth, okay? One, the question

1 was, was I aware of the report? I was not aware of
2 the report. I am not aware of any investigation.
3 That was the question. That is what I'm responding
4 to.

5 COMMISSIONER HERIOT: Okay. Then my
6 question is, are you aware of the letter?

7 MR. MORALES: Yes.

8 COMMISSIONER HERIOT: Okay. What are you
9 doing about it?

10 MR. MORALES: I have referred to the
11 Chair.

12 COMMISSIONER HERIOT: Okay. Then my
13 question is for the Chair. What are you doing about
14 it?

15 CHAIR GARZA: We are planning to speak
16 about that separately.

17 COMMISSIONER HERIOT: It's been more than
18 a month, you know.

19 CHAIR GARZA: No, it has not.

20 COMMISSIONER HERIOT: Yes, it has.

21 CHAIR GARZA: Commissioner Heriot, again,
22 we can go ahead and speak about --

23 MR. MORALES: No, it has not.

24 CHAIR GARZA: We can speak about this at
25 a later time. This is wildly inappropriate. The

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Staff Director has answered the questions regarding his knowledge about this that was brought up during the Staff Director's report portion. We do not have any further business on this agenda at this time. Again, I --

COMMISSIONER HERIOT: What's wildly inappropriate is that the Commission has not been informed of this letter and that we had to read about it in the newspaper.

CHAIR GARZA: There are many things that I have had to read about in the newspaper, Commissioner Heriot, that you have put out there, and I do not find this appropriate to be doing this in this format. So I'm happy to speak with the Commissioners offline.

III. ADJOURN MEETING

CHAIR GARZA: There is no further business on the agenda. I'm going to go ahead and close out this meeting. The meeting is being adjourned at 11:06 a.m. Eastern Time. Thank you all so much for your time and attention today.

(Whereupon, the above-entitled matter went off the record at 11:06 a.m.)

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Date: 10-18-24

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