U.S. COMMISSION ON CIVIL RIGHTS

BUSINESS MEETING

FRIDAY, SEPTEMBER 14, 2018

The Commission convened in Suite 1150 at
1331 Pennsylvania Avenue, Northwest, Washington, D.C.
at 10:00 a.m., Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair*

DEBO P. ADEGBILE, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner*

DAVID Kladney, Commissioner*

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

* Present via telephone
STAFF PRESENT:

LASHONDA BRENSON

KATHERINE CULLITON-GONZALEZ

PAMELA DUNSTON, Chief, ASCD*

ALFREDA GREENE

WARREN ORR

ELIZABETH PAUKSTIS

MICHELE RAMEY

SARALE SEWELL

JUANDA SMITH

BRIAN WALCH

MARIK XAVIER-BRIER


COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART*

JASON LAGRIA

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC
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CHAIR LHAMON: Good morning. This meeting of the U.S. Commission on Civil Rights comes to order at 10:00 a.m. Eastern Standard Time, on September 14, 2018. The meeting takes place at the Commission's headquarters located at 1331 Pennsylvania Avenue, N.W., Washington, D.C.

I'm Chair Catherine Lhamon. The commissioners who are present at this meeting in addition to me are Commissioner Adegbile, Commissioner Heriot, Commissioner Narasaki.

On the phone, if you could confirm that you are on the line when I say your name, I believe we have Vice Chair Timmons-Goodson.

VICE CHAIR TIMMONS-GOODSON: Present.

CHAIR LHAMON: Thank you.

Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Here.

CHAIR LHAMON: Thank you.

Commissioner Kladney. Commissioner Kladney, are you on the line?

(No response.)

CHAIR LHAMON: Okay. Commissioner Yaki.

COMMISSIONER YAKI: Aye.
CHAIR LHAMON: Thank you.

A quorum of the Commission is present.

Is the court reporter present?

COURT REPORTER: Present.

CHAIR LHAMON: Thank you.

Staff director present?

STAFF DIRECTOR MORALES: Present.

CHAIR LHAMON: Thank you.

The meeting now comes to order.

I. APPROVAL OF AGENDA

CHAIR LHAMON: Is there a motion to approve the agenda for the Business Meeting?

COMMISSIONER ADEGBILE: So moved.

CHAIR LHAMON: Thank you. Is there a second?

VICE CHAIR TIMMONS-GOODSON: Second.

CHAIR LHAMON: Thank you.

Are there any amendments to the agenda?

COMMISSIONER ADEGBILE: Madam Chair, I have an amendment.

CHAIR LHAMON: Commissioner Adegbile.

COMMISSIONER ADEGBILE: I move to amend the agenda to add a discussion and vote on the Federal Sexual Harassment Concept Paper for 2019.

CHAIR LHAMON: Thank you. We can take
that up in the program planning discussion. But good to know. Thank you.

COMMISSIONER ADEGBILE: Sure.

VICE CHAIR TIMMONS-GOODSON: Madam Chair, I move that we amend the agenda to introduce an administrative instruction regarding recusal and abstention.

CHAIR LHAMON: Thank you. Is there a second?

COMMISSIONER ADEGBILE: Second.

CHAIR LHAMON: Thank you. Are there any other amendments?

(No response.)

CHAIR LHAMON: If there's no further amendments, let's vote to approve the agenda as amended.

All those in favor say aye.

(Chorus of aye.)

CHAIR LHAMON: Any opposed?

(No response.)

CHAIR LHAMON: Any abstentions?

(No response.)

CHAIR LHAMON: Hearing none, the motion passes unanimously.

II. BUSINESS MEETING
CHAIR LHAMON: We will now hear over the phone from our Indiana Advisory Committee Chair Diane Clements-Boyd on the committee's recently-released advisory memorandum, Voting Rights in Indiana.

Ms. Clements-Boyd, you are welcome to speak for 10 minutes.

A. PRESENTATION BY

INDIANA ADVISORY COMMITTEE CHAIR

ON THE COMMITTEE'S RECENTLY RELEASED REPORT,

VOTING RIGHTS IN INDIANA

MS. CLEMENTS-BOYD: Thank you. Good morning.

CHAIR LHAMON: Thank you. Good morning.

MS. CLEMENTS-BOYD: Again, my name is Diane Clements-Boyd, and I serve as Chairperson of the Indiana Advisory Committee.

To the Chair, Catherine Lhamon, and the Commissioners, thank you all for this opportunity to highlight a few areas outlined in the Memorandum on Voting Rights in Indiana.

The Indiana Advisory Committee appreciates the opportunity to support the Commission's 2018 Statutory Enforcement Report and Assessment of Minority Voting Rights Access in the United States.

First, on behalf of the Indiana Advisory Committee,
please allow me to express appreciation to those that provided written comments, as well as enlightening testimony during the hearings and forums held in Indiana.

Also allow me to acknowledge and thank David Mussatt, Melissa Wojnaroski, Carolyn Allen, and intern Christina Rosales for the support they extended to the Indiana Advisory Committee, which led to the Indiana memorandum coming to fruition. So, again, thank you all.

So in an effort to attain -- obtain a relevant and comprehensive information, the committee decided on a 4-part process that included a web-based hearing on February 12, a community forum in Evansville on February 17, a public forum in Indianapolis on March 2, and a community forum in Gary on March 31.

The committee heard testimony from community members, academics, legal professionals, government officials, party representatives, and community advocacy groups. As indicated in the report, the committee approached the project from a neutral posture. However, during the course of the testimony the committee began to identify clear barriers to voting in Indiana that warrant the
attention of this body.

I want to focus first on three areas of the report, first, Indiana's voter ID law, second, purging of voters, third, legal challenges to voter disenfranchisement, and then end by discussing some of the recommendations based on the findings.

Indiana's voter identification law was identified by several panelists as one of the contributing factors resulting in low voter turnout. As stated in the Statutory Enforcement Report, Indiana was the first state to adopt a voter ID law that required voters to show an unexpired, state-issued photo ID with their current name and address at the polls in order to vote.

The testimony and research presented revealed that voter ID requirements may have a disproportionate impact on African-American and Latino voters. The Government Accountability Office reported that imposing a strict voter ID law decreased turnout by as much as 2 to 3 percentage points, and negatively affected African-Americans than whites.

While in 2008 the Supreme Court upheld the voter identification law in the case Crawford v. Marion County Election Board, many panelists questioned if the law was ever necessary. Moreover,
there was testimony that the purported failsafe, which is the ability to cast a provisional ballot, is problematic at best. The panelists described many shortcomings of provisional ballots that included poll workers that do not always adequately explain the process to voters. Consequently, the voters do not understand that they have to return with the proper identification for their vote to count.

There was also testimony that the voter identification requirement deters voters from even attempting to vote.

Panelists also testified there seems to be no evidence of widespread voter fraud in Indiana to warrant the law, and that mandated government-issued photo identification was a pretext to disenfranchise voters. Specific testimony provided instances in which elderly African-American voters were burdened most by the voter ID.

I'd like to transition now to talk a bit about the purging of votes -- or voters. It has been reported that close to 500,000 individuals have been purged in Indiana since 2014, representing 8 percent of the voting population. The Indiana Secretary of State's office reported following the federal guidelines outlined in the National Voter Registration
Act, also known as the Motor Voter Act, were maintaining an active voter participation list.

Indiana utilizes the Interstate Voter Registration Crosscheck database to determine if voters had moved to another state, therefore deemed voters as no longer eligible to vote.

Crosscheck has been reported as unreliable and the sources of many false hits for Latino, Asian, and African-American voters.

There was also testimony that questioned the need for robust voter maintenance list efforts, considering Indiana's lackluster voter participation rates in which Indiana rates 50th or last in the 2014 election year. It was reported that only 30 percent of Hoosiers cast ballots in 2014. And in 2016, 58 percent of Hoosiers voted, which put Indiana in 38th place.

Many expressed that efforts should be taken to promote voting by making voting easier as opposed to removing voters from the rolls, risking disenfranchising of voters.

The requirements of the NVRA are such that, one, the state must first have an objective and reliable information that voters have changed residence, then leading to two, which is sending a
notification. If voters do not respond or the notice is returned undeliverable, the election office must wait two federal election cycles during which the voter has not voted or appears to have voted, before removal of voters from the rolls.

Several panelists took issue with and questioned if the Crosscheck program met the objective and reliable test of the NVRA.

There have been several legal challenges to voter disenfranchisement, indicating efforts to suppress the vote in Indiana. I will start by discussing Senate Bill 442, which was passed by the Indiana legislature, which would have allowed immediate removal of voters if they appeared in the Interstate Voter Registration Crosscheck database. As a result of this legislation, on August 7 -- August 11 of 2017, the Indiana State Conference of the NAACP and the League of Women Voters of Indiana filed a lawsuit against the Indiana Election Division and the Indiana Secretary of State to prevent the unlawful removal of voters from the registration rolls.

In June of this year, one month before the law would have been enacted, District Judge Tanya Walton Pratt ruled in that legal challenge that the legislation violates the National Voter Registration
Act and threatens to disenfranchise eligible voters. Judge Pratt opined that while the defendants have a strong public interest in protecting the integrity of voter registration rolls and the electoral process, they have other procedures in place that can protect the public interest that do not violate the NVRA.

The second challenge involved a legal suit filed on May 2 by the ACLU, filed against the Marion County Election Board on behalf of Common Cause Indiana and the Greater Indianapolis Branch of the NAACP, alleging that voters in Marion County, which was the largest population of African-Americans in Indiana, has had unequal access to early voting, citing a violation of the First and Fourteenth Amendments to the Constitution and Section 2 of the Voting Rights Act of 1965.

Indiana state law requires that each 3-person election board unanimously approve satellite voting in each county. Marion County, which is the county with the largest African-American population in Indiana, had one member who continuously voted against opening an additional early voting location, even though the surrounding counties had a much lower ratio of early voting places to registered voters.

The lawsuit alleged that the lone early
voting site in the downtown City-County Building was
disenfranchising voters.

However, in April of 2018, federal Judge
Sarah Evans Barker ordered the Marion County Election
Board to establish at least two early satellite voting
precincts in time for the November general election.
Since that time, preliminary injunction, the parties
agreed to a consent decree which provides for six
satellite voting precincts. And it's also worth
noting that the attorney general has tried to
intervene by filing a motion to amend the consent
decree, but the court has denied that motion.

And lastly --

CHAIR LHAMON: Ms. Clements-Boyd, thank
you so much for the presentation. I want to make sure
that we do have time for the Commission and staff's
questions. So I'll turn to that now, if that's okay
with you.

MS. CLEMENTS-BOYD: That's fine.

CHAIR LHAMON: Thank you so much.

I want to open up for questions from my
fellow commissioners. Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you, Madam
Chair.

Thank you very much for your hard work.
And I hope you took note that we did incorporate some of your recommendations into the Voting Rights Act Report that the commission issued this week. So we very much appreciate the input from all of our SACs. I was curious as to the statement that there's a newly amended state law that allows immediate removal of voters without them receiving notification before they're labeled inactive if they appear in the Crosscheck Program, which we, in our own report, felt was a very flawed program.

MS. CLEMENTS-BOYD: Right.

COMMISSIONER NARASAKI: So I'm wondering what the rationale was for that and if there's any action being taken on that?

MS. CLEMENTS-BOYD: Well, yes, there was action. And there was an injunction. The federal judge put a halt to that. So that is not occurring in Indiana at this time.

COMMISSIONER NARASAKI: Oh, that's great.

And then the second question I had was the Marion County where you have a 3-person election board and one which requires unanimous approval for satellite voting with the largest African-American population. So how are the election board members, are they appointed by the governor or are they
elected? How do they --

MS. CLEMENTS-BOYD: I believe they are appointed by each party has a representative, as well as the county clerk. And I believe there is an attorney that acts as an advisor.

COMMISSIONER NARASAKI: And so has there been any effort to address that problem in Marion County with that particular board member?

MS. CLEMENTS-BOYD: Again, as a result of the lawsuit. It did take organizations filing suit to halt that as well.

COMMISSIONER NARASAKI: Right. But the board member's still there?

MS. CLEMENTS-BOYD: I don't know the answer to that. I think that they're appointed so, you know, I would assume that maybe they are. I don't know.

COMMISSIONER NARASAKI: Okay, well thank you. It's just troubling that you would have someone there on an election board who would be preventing access to the ballot for so many people.

Thank you.

MS. CLEMENTS-BOYD: Right. And I think that that was the opinion of our committee, that it should not require a unanimous vote. And I think that
someone mentioned that we wouldn't have a Voting Rights Act if it required a unanimous vote. So that was definitely a flaw, I think, in the procedures and, actually, in state law.

CHAIR LHAMON: Thank you, Chair Clements-Boyd. I meant also to say that my understanding is that Commissioner Kladney is now on the phone.

Commissioner Kladney, is that correct?

Commissioner Kladney, are you on the line?

COMMISSIONER KLADNEY: Yes. Yes, I am.

It's just a matter of being able to hit the button correctly.

CHAIR LHAMON: Thanks very much.

So, Chair Clements-Boyd, when you made your presentation you made your presentation to the full commission. Just wanted to make sure you knew.

MS. CLEMENTS-BOYD: And I'm sorry. I didn't want to leave anything out, so I did write down some notes. And you have the report in front of you.

There was so much that we gleaned from this testimony. And we think that the report, there's a lot there, there's a lot to unpack, but I think the committee is committed to making sure that voters in Indiana are not disenfranchised.

We are going a step further and possibly
issuing some op ed pieces just in the event that there are voters that have been purged as a result. We have some commissioners that think that it's bad policy. Others think that there was more nefarious intent. But nevertheless, we want to make sure that voters have the opportunity to register to vote before the deadline which is approaching on October 9. So we're working feverishly to draft op ed pieces that we'll submit to the Indianapolis Star, and, hopefully, they'll be picked up throughout the state.

CHAIR LHAMON: Thank you. Wonderful to hear.

And I am also very pleased to report to you that the commission has followed all of the recommendations in your advisory memorandum directed at the commission. So thank you for those recommendations. And I am pleased that we can check those boxes already to date.

I want to ask my fellow commissioners if they are comfortable with our citing the relevant pages of the commission's report responsive to the recommendations at page 13 of this advisory memorandum directed to the Indiana Secretary of State when we send our letter, our transmittal letter.

There's a question from Commissioner
Heriot that she doesn't understand what I was asking. But the issue is when we send our transmittal letter of this report we -- we can also attach the commission's report. And one of the recommendations from the Indiana Advisory Committee is that we issue, the commission issue a recommendation to Indiana Secretary of State to suspend the use of the Crosscheck Program until a more accurate method for identifying voters registered in multiple locations is identified.

We could cite the relevant pages of the commission's report on the Crosscheck Program when we send the transmittal letter.

Your microphone is off, if you wanted to turn it on.

But, yes, I mean simply taken, we've already voted on, send that and attach it with the letter.

(No response.)

CHAIR LHAMON: Hearing no objection, I think we will plan to do that. Thank you.

Are there any other questions for the Indiana State Advisory Committee?

(No response.)

CHAIR LHAMON: Okay, hearing none --
MS. CLEMENTS-BOYD: Sorry we didn't approve the recommendations, Chair Lhamon. And I apologize. But just know that the Indiana Advisory Committee is very committed, and we hope to extend this work beyond this report.

CHAIR LHAMON: Well, we look very much forward to following that. And I thank you very much for your presentation today as well as your service --

COMMISSIONER KIRSANOW: Madam Chair, Kirsanow here, I did have one question.

CHAIR LHAMON: Oh, go ahead, Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Thank you very much. And thank you for this information.

Just had one question with respect to the voter ID. Did you or were you able to deduce any evidence that would explain why it is that elderly African-American voters were burdened more by the voter ID requirement than any other demographic group?

MS. CLEMENTS-BOYD: Some of the testimony did describe that there were instances where they were delivered by a midwife and there was a birth -- or there was no birth certificate. Or in one case I believe there was a birth certificate but the mother actually did put a different name on the birth
certificate than was on the Social Security information, so there was a conflict there.

And there were just circumstances even where, you know, they didn't have the proper voter ID, they had -- the testimony was he had a sackful of ID but none of it was good enough that they were able to accept it. It didn't have the government-issued picture ID.

So, for whatever reason, the stories that were shared, the testimony that was shared involved elderly African-American people that, you know, bore the brunt of that policy.

COMMISSIONER KIRSANOW: Did the state erect any barriers that you found to the acquisition of state ID for elderly African-American voters?

MS. CLEMENTS-BOYD: Other than testimony?

This was direct --

COMMISSIONER KIRSANOW: Yes. My understanding is that the state provides free IDs if you don't have one.

MS. CLEMENTS-BOYD: Yes. That is, that is accurate. The state does provide free ID. And I think that it's a matter of, you know, possibly transportation can be a barrier for individuals in some cases, or just the knowledge of that being
available. I think we assume that everyone knows that, and in some cases I believe that they did not.

COMMISSIONER KIRSANOW: My -- I guess I'm curious as to why it is that African-Americans apparently don't know this.

MS. CLEMENTS-BOYD: And even the requirements that are necessary to get the ID, the birth certificate, the supporting documentation, in these instances I'm not saying that there were other people that don't have those same barriers, I'm just describing the testimony that we received.

COMMISSIONER KIRSANOW: Thank you.

CHAIR LHAMON: Commissioner Narasaki, I understand you have some more questions?

COMMISSIONER NARASAKI: No. I just wanted to add to what our SAC Chair noted that the problem with free IDs is that you require feeder documents that have -- that are themselves usually charged for. So you still have to pay money in order to get those feeder documents.

And if you're not born in that state, that makes it even more difficult to get those IDs from other states.

And then, finally, what has happened with, I think, the elderly low income communities and voters
is that they may have midwives. Or, like my grandmother, she lived in a very rural area, and her birth wasn't recorded until two months after her actual birth. So there are a lot of problems that come up, particularly in those days, when less people were born in hospitals and you had less access to the kinds of very limited official documents that are required for these extremely strict IDs.

And as the SAC Chair noted, Indiana is notorious for having among the strictest.

COMMISSIONER KLADNEY: Madam Chair, Kladney here. Hello?

CHAIR LHAMON: Commissioner Kladney, go ahead.

COMMISSIONER KLADNEY: I'd just like to note that I actually went looking for my birth certificate two years ago when I couldn't find it. Imagine that after 68 years. And I wound up having to find -- go back to the state that I was born in, and I had to spend $25 to get a certified copy, because you need a certified copy.

So I'd just like to note that for the record.

CHAIR LHAMON: Thank you.

Chair Clements-Boyd, thank you again for
your testimony today and for your leadership on your State Advisory Committee. We very much appreciate it.

MS. CLEMENTS-BOYD: Thank you so much, Chair.

CHAIR LHAMON: Thank you.

And next we will hear from our Texas Advisory Committee Chairman Mimi Marziani on the committee's recently released advisory memorandum, Voting Rights in Texas.

I will say, Ms. Marziani, that we are sorry that we don't see you here in person today. And we understand that travel delays can cause it -- but we're very grateful --

MS. MARZIANI: Yes.

CHAIR LHAMON: -- that you're willing to participate by phone. Please go ahead for 10 minutes.

B. PRESENTATION BY

TEXAS ADVISORY COMMITTEE CHAIR

ON THE COMMITTEE'S RECENTLY RELEASED REPORT,

VOTING RIGHTS IN TEXAS

MS. MARZIANI: Oh, of course. Thank you so much.

Again, my name is Mimi Marziani. And I really do thank you for inviting me to testify this morning and for your flexibility with my disrupted
travel plans.

I have been really grateful for the honor of leading the Texas State Advisory Committee. As some of you know, I also serve as the president of the Texas Civil Rights Project. At TCRP we provide Texas lawyers for Texas communities in service of a larger movement for equality and justice.

And one of our main priorities is advancing and protecting voting rights, especially for persons of color. So I wanted to express that we are deeply appreciative of the commission's work in this area.

So the research of the Texas State Advisory Committee dovetails with that of the commission to underscore some central truths about the state of democracy in Texas.

Number one, Texas is a non-voting state, and that's true whether you measure it by voter registration rates, by turnout rates, or other indicators of civic engagement.

Number two, one major reason that Texans do not vote is because we are not on the registration rolls. Even more disturbing is evidence shown by our testimony of significant disparities between who are on the rolls and who is not. And these are driven by
policy choices of our state.

And, in short, as we explain, Texas's current electorate, meaning those people who could cast a ballot that counts tomorrow, is much whiter and older than our population as a whole.

Third, the mechanisms of our elections in Texas are deeply flawed. This leads to a chaotic experience during the voting period itself. And in our report we highlight specific breakdowns in election administration, including but not limited to ever-changing polling places, election workers who don't understand election law and are sometimes influenced by bias, significant variations in policy between counties, improper partisan influence in local policy decisions, and a chronic failure to abide with federal law, including the Americans With Disabilities Act and the language access provisions of the Voting Rights Act.

And, unfortunately, testimony indicated that all of these election administration problems disparately impact voters of color, voters with disabilities, and young voters.

These problems are solvable, and they're solvable right here in Texas by state leaders. In our report, on pages 13 and 14, we list dozens of specific
policy changes that our state leaders could adopt, both in the Secretary of State's Office and in the legislature. I would like to stress that these policy recommendations are directly driven by the testimony we received, and we believe reflect common sense.

And I'm really proud to say that our committee is made up of people who bring a variety of experience and partisan viewpoints to the table. And our entire committee believed that these recommendations should be embraced by state leaders, regardless of political party.

And I know you've read it, but I wanted to quickly highlight just a couple of those examples. They include modernizing the voter registration process by complying with the National Voter Registration Act at state agencies, and by adopting online voter registration.

They include enforcing compliance of a longstanding state law that requires Texas high schools to provide voter registration to eligible students twice a year.

We included reforming the legally problematic restrictions on voter registration drives which currently make voter registration drive activity wrought with legal liability.
And, finally, investing in polling place administration by creating statewide standards, training, and providing resources to the counties to implement this.

And we argue that we can and should take a cue from the private sector and approach voting with a customer first attitude.

In closing, I'll note that very unfortunately, and despite the diligence of our committee that is laid out on the first page of our report, no statewide leader would participate in our public hearing in person. We did extensive outreach to state leaders urging their participation, including the Secretary of State's Office, the Election Division, the Attorney General, and lawmakers who have recently sponsored significant election law legislation in Texas, such as the photo ID law.

And we did ultimately receive short written testimony from the Secretary of State's Office which we incorporated.

And so, even though we were disappointed there, we do very much hope that this commission will decide to send our report and recommendations to those state leaders and urge them to take seriously our common sense suggestions to reform elections in Texas.
and better protect voting rights.

Thank you for your time, and I am happy to answer any questions.

CHAIR LHAMON: Thank you so much, Chair Marziani. I'll open up for questions from my fellow commissioners.

Commissioner Adegbile.

COMMISSIONER ADEGBILE: Sure. Thank you so much for this important study of voting in Texas. It was helpful to have. And I think that there are many of the themes and issues that you discuss that are overlapping with the larger narrative of the report that this commission released this week.

MS. MARZIANI: Yes.

COMMISSIONER ADEGBILE: In particular, I want to explore with you the observation that the Texas Election Code is now the only, or at least the principal law governing polling place changes in Texas, and that it requires just 72 hours' notice of polling location changes, and that in recent elections last minute changes have greatly increased confusion on where voters are required to vote.

The reason I focus on this item, as you have focused on it, is that there is a sense that there are some measures or issues that are soundly in
the discretion of local election officials and should not be the subject of greater oversight. Some may argue that that was part of the rationale for the Shelby County ruling.

But I think -- I think the national report points out that these changes, that may be seemingly small, changing a polling place or moving it from one place to another, can actually effect a disenfranchisement of voters if it is carried out in the way that you describe in this report, a hide-the-polling-place approach --

MS. MARZIANI: Absolutely.

COMMISSIONER ADEGBILE: -- to making polling place modifications.

And so I'm just interested in any depth or additional sight lines you could give us into how this is playing out in Texas. And I note that this issue is playing out in many other states with hotly contested elections.

MS. MARZIANI: Absolutely. Thank you for that observation. I think I have three points in response that could be helpful for the commission.

Number one, to your point of local discretion, of course the Texas Election Code actually already sets a floor in this area. It does set a 72-
hour notice period. Our committee certainly thinks that's not enough. Testimony indicated strongly that 72 hours is not enough notice.

But it does mean that this would not be a new regulation into local matters, instead, this would be the state adjusting that time period to reflect the reality from the ground.

Second point is that testimony indicated, and common sense also supports, that folks who are really impacted most significantly by last minute polling place changes tend to be poor. They lack private cars. They are more likely to have hourly jobs where there's a significant economic burden in taking time off to vote.

And in Texas, unfortunately, because of other information we received we also know -- including the photo ID law that -- and litigation that the commission explored in depth in your report, we know that there is a strong correlation in Texas between being poor and being more likely to be a person of color. And so this absolutely has racial effects.

The third point I'll make to you, and something else we highlight in our report, is that right now the Secretary of State's Office does not
collect and analyze provisional voting data. And because of that there is no official source for us to understand just how burdensome polling place changes are. That would, obviously, only give you one indication, but it's an important indication because if somebody shows up to vote at the wrong polling place in Texas they're given a provisional ballot, and that will ultimately not be counted. But there is a record of the provisional ballot.

Right now those records are only kept at the county level, and the state has not gone through what we think would be the very important step of looking statewide at how many people's ballots are, quite frankly, thrown in the trash can because they end up just going to the wrong polling place and then trying to connect that with polling place changes.

COMMISSIONER ADEGBILE: Thank you.

CHAIR LHAMON: Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you very much for your hard work. I think Texas is one of the foremost examples that at least I had in mind when I agreed with the finding in our recent report that some states persistently fail to comply with various voting rights laws. And Texas has been challenged, I think maybe competing with North Carolina, for the state
most sued by civil rights groups for the many violations that they continue to resist wanting to allow the minorities who live in their state to vote.

I note that Texas has -- 1 in 11 Americans live in Texas. So what happens to voters in Texas has an enormous impact on our country, and that almost 20 percent of the Latino population calls Texas their home, second only to California. So the work that your SAC is doing I think has import not just for Texas but for the entire country.

So very much appreciate --

MS. MARZIANI: Absolutely.

COMMISSIONER NARASAKI: -- the very thoughtful examination and recommendation, and am impressed that it was unanimously found by your State Committee which is very, very bipartisan.

I was very struck with the very tough limitations on the people who are allowed to help register Texas voters, particularly given the low amount of turnout in Texas. One would think that the state leadership would be more concerned about trying to help their citizens get to the ballot box instead of throwing barriers in front of people who are volunteering many times to register.

And I'm wondering what the debate was in
terms of what was behind all of these very severe restrictions like criminal penalties associated with failure to comply and all of those issues, and what the thinking is in terms of how those could be fixed.

MS. MARZIANI: Absolutely. And thank you for all of those insightful thoughts.

Yes, by my calculation the rules in Texas governing voter registration drives are more strict than anywhere else in the country. And the results are stark.

One of the findings that we included, for instance, that Bexar County which is home to San Antonio, one of the largest, fastest growing, most diverse cities in the entire country, has a population right now of more than 1.5 million people, and in 2016 there were less than 1,000 people who could legally register their neighbor to vote. That is a pretty shocking statistic.

The story of how we got to this point is fairly complicated, and I don't have time to share it all today. But I'll note a couple things.

One, it was a product of, one, laws that were actually fairly progressive in the 1980s going stale over time.

And then, number two, in 2011 some
tightening of these laws by the state legislature. And, quite frankly, that tightening was overshadowed by the photo ID law and by the redistricting maps that were passed at the -- during that same legislative session, both of which have been held by multiple federal courts to discriminate in one way or another against black and brown voters in Texas.

And so I do think that's one of the reasons that these voter registration drive restrictions have flown relatively under the public radar.

I will point to footnote 34 of our report. And excuse me for -- I do not mean for this to be a self-promotion, but this is a subject that I particularly know a lot about, and I did publish a report with the American Constitution Society this summer talking about restrictions on voter registration drives. And if you're interested in diving a little bit more deeply into the history, it is all laid out in that article cited in footnote 34.

COMMISSIONER NARASAKI: Thank you.

CHAIR LHAMON: Thank you. Any other questions from fellow commissioners, including on the phone?

(No response.)
CHAIR LHAMON: Okay, if there's no further questions, we'll move to our next item on our agenda. And thank you, Chair Marziani, for your service and your leadership on the Texas State Advisory Committee and for taking the time to speak with us today about this really terrific report. Thank you.

MS. MARZIANI: Thank you.

CHAIR LHAMON: Next we'll hear from our Alabama Advisory Committee Chair Jenny Carroll on the committee's recently released summary of testimony titled Access to Voting in Alabama.

I will say that I had the pleasure of attending the State Advisory Committee meeting in Alabama. And, Chair Carroll, you have shown up me as a chair and set a new bar for other chairs by baking homemade cupcakes and bringing them to the State Advisory Committee meeting. So thank you for that. It was especially lovely. And I'm sorry that I didn't do that today.

COMMISSIONER ADEGBILE: Pick it up, Lhamon. Pick up the pace, Lhamon.

(Laughter.)

CHAIR LHAMON: You're not making it better.

But you go ahead with the 10 minutes now.
I'm not sure your microphone is on.

C. PRESENTATION BY

ALABAMA ADVISORY COMMITTEE CHAIR

ON THE COMMITTEE’S RECENTLY RELEASED

REPORT, ACCESS TO VOTING IN ALABAMA

MS. CARROLL: Am I on now?

CHAIR LHAMON: Yes.

MS. CARROLL: Okay, thank you. So I'm going to skip some of the thank you’s, which is not to say I'm not grateful, but I want to get to some of the substance of what I've prepared for today.

On February 22, the Alabama State Advisory Committee did hold a hearing in Montgomery to explore the topic of voting regulations in our state following the Supreme Court's decision in Shelby County v. Holder. At that hearing we heard testimony that since the Shelby County decision Alabama has passed a number, and implemented a number, of facially neutral regulations on voting that nonetheless raise some concerns about the opportunity of enfranchisement among the very populations that the Voting Rights Act was designed to protect.

The days of the sheriff standing in the doorway of a polling place in Lowndes County may be a thing of the past in Alabama, but nonetheless concerns
consist -- persist, rather, that voting requirements may produce the same effect on poor and minority populations of our state. The methods may be softer, they may be more subtle, but the results of these post-Shelby County regulations are much the same.

Now I want to focus my comments today on a few of the regulations we explored, voter ID requirements, voter purging policies, and felony re-enfranchisement procedures. There's others we could talk about. We could talk about the lack of early voting in the state of Alabama, limited absentee balloting procedures, the location of polling places coupled with the lack of public transportation in many counties, confusion around electoral requirements and procedures.

The list goes on and on, but I have 10 minutes, and the history and complexity of current voting regulations is long. So I'm going to keep my focus on these, but I'm happy to entertain any questions you may have with regard to others.

So one of the first regulations that Alabama passed following the Shelby County decision was the requirements that voters have identification. Secretary of State John Merrill and John Park testified that ID requirements reduce individualized
voter fraud by ensuring that the person who casts the ballot is actually the person listed on the voting rolls.

Now Alabama does accept a variety of identification. Secretary of State John Merrill, however, acknowledged in testimony that the most common form of voter identification accepted by the state is an ID card that is issued through the Department of Motor Vehicles, the County Clerk's Office or, in some cases, by the Secretary of State's Mobile ID unit.

Now I applaud the efforts of my state to ensure voter integrity, and I also applaud their efforts to accept multiple forms of ID and offer multiple locations by which to obtain those forms of ID. The problem is, that does not tell the whole story. And I'm a person who likes whole stories. So on behalf of the committee I did a little research and dug into some more information about identifications in the state of Alabama.

In 2015, in response to a budget dispute at the state level, then-Governor Bentley decided to close 31 DMV offices throughout the state of Alabama. In 2016, the Department of Transportation conducted an investigation into these closures, and concluded
that the closures adversely affected counties with majority black populations.

Now this led me to dig into the Alabama Law Enforcement Agency, or LEA, statistics as well as census data for the state. Of the 11 counties in Alabama that have a majority or near majority black population, eight suffered complete closures of DMV offices in their counties. The three counties that did not suffer such closures are home to Montgomery, Birmingham, and Selma, which is the state capital and two of the most populous cities in our state.

In response to the DOT's findings, the state reopened offices in some of the counties, though with limited hours. For example, when I contacted Wilcox County I learned that the office was open three days a week. In Bullock County it's only open one day a week.

I also pulled the ALEA statistics for the 31 closed locations. In 2014, prior to the closures of these DMV offices, they issued 3,149 drivers licenses and over 5,000 learner permits. Under the new reduced hours these offices issued less than 1,000 in 2016 and 2017.

Counties such as Choctaw, Sumter, Hale, Greene, Perry, Wilcox, Lowndes, Butler, Crenshaw,
Macon, and Bullock are all poor counties. They are among some of the poorest counties in our nation. They're primarily black. Some have populations as high as 82 percent African-American, and all of them lack a full-time DMV office.

Now as for clerk's offices, they tend to be in town centers. They suffer similar limited hours, as we heard in the testimony from Secretary of State Merrill. And public transportation is virtually, and in some cases actually, nonexistent in these counties.

Now in the end, the budget figures available on al.gov, which is our government budget source, show that the closures of these DMV offices saved our state $200,000 to $300,000 out of a general budget that year that was over $100 million. So no sheriff had to stand in the polling place door to disenfranchise these populations in these counties. The real lived experience of the poor and rural and working class people in those counties in my state was that acquiring an ID as required by the state identification law to vote poses a significant logistical challenge.

That it is possible to acquire the ID does not mitigate that challenge. And so with all due
respect to Secretary of State Merrill, who indicated that anyone who wants to get an ID need only try, he even offered his cell phone number to us at the hearing, and we were told we could call him directly, all the efforts in the world by those individuals are not going to reopen those DMV offices. They're not going to create transportation systems that can get people to county clerk's offices. And I can tell you from firsthand experience stuck on the side of the road in Greene County, where I had absolutely no cell service, they are not going to create the ability to contact the Secretary of State.

Now, weigh that against voter integrity concerns raised by the Secretary of State. Secretary of State Merrill acknowledged that prior to the voter ID law's passage there were no reported or investigated instances by his office of voter impersonation. According to Merrill, since he took office, which is after the voter ID law was passed, there have been six incidences.

Now this is consistent with testimony by Professor Justin Levitt before North Carolina that in 14 years there were 31 credible cases of voter fraud by impersonation out of over a billion ballots passed, and by the testimony of Dr. Kareem Crayton before us
that such type of fraud is simply infinitesimal. Plainly put, it's a poor way to steal an election.

So I want to turn to the issue of voter purges. Now, like all states, voters in Alabama are required to register to vote. Now in many ways Alabama has done a good job of streamlining this process. We offer multiple ways to register and multiple methods of registration, including an online method of registration.

But staying registered to vote is another story in the state of Alabama. Inactive voter policies may negate some of the advances that we've seen in efforts to increase the amount of voter registration. In Alabama, voters are declared inactive if the Board of Registrars are unable to confirm the voter's address. Now on its face that seems logical and well-connected to goals of voter integrity. Such confirmation of address, however, requires that the voter mail in cards.

Now this method assumes that a voter receives mail and is able to return the card within a designated period of time. If the voter cannot or does not, he or she is removed from the eligible voter list and must complete a voter re-identification update, either in person or through the mail. So for
many voters we heard testimony that the first time they learned that they were listed as inactive voters was when they actually showed up to cast their ballot.

At that point they're faced with three options. They can vote a provisional ballot and then provide the required update on voter ID by 5:00 p.m. the Friday following the election.

They can fill out the update form at the polling place, and for many polling places this requires them to stand first in line to fill out the form and then stand in another line to cast the ballot, or they cannot vote at all.

So the result is -- evident, rather, even eligible voters may find themselves faced with an untenable choice between expending time that they simply do not have, or losing their right to vote.

This brings me to the last topic, felon disenfranchisement. There's two components to this. The process required for re-enfranchisement through the Board of Pardons and Paroles, and the requirement that a voter have paid off all court fines, legal fees, and victim restitution before they may seek re-enfranchisement.

In 2017, Alabama amended its statutes so that only designated crimes of moral turpitude produce
disenfranchisement. While the list of these offenses are widely available, admittedly an improvement over the county by county determination that occurred prior to 2017, testimony shows that still 7.62 percent of voters in Alabama are disenfranchised.

In addition, the testimony showed that there was widespread confusion about requirements for voter re-enfranchisement, including confusion about whether or not fines and fees actually had to be paid before folks could re-register to vote.

Beyond this, the crimes of moral turpitude list in Alabama focuses primarily on street level offenses. As a former public defender I will tell you those are the types of offenses that minority and poor people tend to get arrested for, charged with, and convicted of. As a result, this neutral classification may be loaded with bias.

I realize I'm at the end of my time, but I want to offer this summary. I've tried to provide you with a snapshot of regulation in Alabama. And I want to be clear, the picture I'm providing you concerns me not because I think it rises to the level of disenfranchisement we saw historically in our state, nor because I believe that these regulations necessarily carry within their body an intent to
discriminate. I am concerned about these regulations because I believe, regardless of that intent, that they may be having the same effect.

Simply put, the road to the ballot box is longer and harder for poor and minority populations in my state. So the same men and women who have the least in my state are losing one more right, which is the right to vote and hold their government accountable to them.

Now when I am here before you I don't think in terms of broad electoral theories. I don't think in terms of a spectral concept of fraud. I think in terms of the men and women I have met and spoke with within my state. I think of their lives, I think of their experiences, and I think their voices should matter to our government.

So whatever progress we have made, I believe we can do better by them.

So thank you. And I'm happy to entertain questions. And I'm sorry I ran over.

CHAIR LHAMON: Thanks very much, Chair Carroll.

I'll open for questions from my fellow commissioners.

Commissioner Adegbile.
VICE CHAIR TIMMONS-GOODSON: Madam Chair.

CHAIR LHAMON: Madam Vice Chair, go ahead.

VICE CHAIR TIMMONS-GOODSON: Yes. Thank you very much. And thanks, Chair Carroll, for an excellent presentation and for all of the work done in connection with this issue.

I was particularly touched by the information provided that indeed an effort was made 2017 through legislation to try and to do something about felony disenfranchisement. It sounds as if there was some progress made, but certainly not enough.

Some years ago I was (telephonic interference) and was sharing with it the fact that where felony disenfranchisement is concerned North Carolina was very progressive in that once an individual was free from (telephonic interference) completed all obligations in connection with the felony they were automatically --

CHAIR LHAMON: Madam Vice Chair, I'm sorry for interrupting you. We appreciate that you're -- that you're calling in from a Category 2 storm in your state, but we are having some interference with hearing you.

Is it possible for you to move or to move
closer to the microphone so that we can hear you more clearly?

VICE CHAIR TIMMONS-GOODSON: I'm right on top of it.

CHAIR LHAMON: Thank you.

VICE CHAIR TIMMONS-GOODSON: Okay.

CHAIR LHAMON: Now we hear you better.

VICE CHAIR TIMMONS-GOODSON: But to get to the (telephonic interference) my question is he appeared to express some interest in the return of one's enfranchisement by felons be automatic. And can you tell me whether the current statutes allow for that?

MS. CARROLL: So, as I understand it, your question is whether or not the current statute in Alabama allow for automatic re-enfranchisement of those convicted of crimes that fall outside of the prohibited categories.

The answer is no, that in order to be re-enfranchised under the state statute you have to go through the Board of Pardon and Paroles. You have to apply for and receive a Certificate of Eligibility to Vote, known as a CERV. Part of the problem in the state is that there is one wide discrepancy on what qualifies as having satisfied the requirements for the
And one of the primary issues of dispute county by county is whether or not the payment of all fines and fees qualifies. Secretary of State Merrill has issued a statement in response to a question we sent him regarding that issue that you do not have to have paid all fees and fines to be eligible. However, according to various offices, they are still requiring that individuals have completed those financial obligations before they will issue the CERV.

Beyond that, access to the actual form to apply for a CERV is not widely available, nor is it routinely distributed to individuals at either the time of sentencing, during the period of incarceration, during the period of release, or necessarily by a probation or parole officer as he or she advises the individual.

It's really inconsistent throughout the state. And that's one of the big concerns that our committee has identified.

VICE CHAIR TIMMONS-GOODSON: Thank you.

MS. CARROLL: Thank you. And good luck with the hurricane.

CHAIR LHAMON: Commissioner Adegbile.

COMMISSIONER ADEGBILE: Thank you. Thanks
for that very compelling testimony and articulation of the SAC's work in Alabama. I have more of a statement than a question, though I think there will be a small question in here.

Your recitation of the findings of the SAC are in many ways the perfect example of what has been lost in a post-Shelby world. I say that because you took it upon yourself to drill down into the facts that will illuminate what the impact of certain changes are that affect voting, which was in effect what the pre-clearance regime allowed and required before voting changes could go in place.

It required that the information be visible and be proffered so that the real world impact, as you said, could be known. And what that did is it created an opportunity to mitigate problems before a measure was put in place. And so I think that your testimony from the state that brought us Shelby County, from the state that in some respects brought us the Voting Rights Act -- and you specifically mentioned Selma which continues, apparently, to be part of this national story -- but you have articulated in a very clear way what the challenges are for voters who no longer have important protections that once guarded their voting rights, not
for some special reason, because they had for many years had impediments put in their way.

And I'm sad to hear that that story continues, though perhaps it was something that we anticipated in the wake of Shelby County.

More specifically, there was testimony from the chair of -- or from Mr. Simelton of the NAACP about voters who voted in a very recent election last year who were nonetheless gone from the rolls, purged I guess, from the rolls when they showed up to vote. Is there any visibility about how that could happen? It's not clear to me that that would be consistent with any NVRA permitted purging process.

MS. CARROLL: Right. And my understanding of it, and I mean this has been something that I have been working on trying to track down. And I'm not done because I tend not to be done until I figure it out, but --

VICE CHAIR TIMMONS-GOODSON: That seems apparent.

MS. CARROLL: Yeah. You can talk to my mother about the long history of that.

But what I am finding is that in many of the precincts that I am being directed to by various organizations, including the NAACP, the folks at LDF,
ACLU, is that many of these voters were not completely off the list, they were listed as ineligible. And so, that's the process I discussed where they're making a choice, do I stand in line and fill out this eligibility form, or mail the eligibility form in, or go to the Clerk's Office to fill out the eligibility form, or do I simply walk away?

It becomes especially problematic because at least in some of the precincts that I looked into that I was directed to by these organizations, they were some of the precincts that have the longest polling lines at hours you would expect -- in the early morning before folks go to work, and in the evening when folks come home from work and are trying to cast their ballot. So that's one problem.

The other thing I'm seeing is there were some polling site location changes, something I didn't talk about in my comments, that produced changes in where folks had voted. So people might have voted for their entire voting history at one location, and as a result of a polling place change they were now asked to vote somewhere else.

And, again, this highlights the problem with inconsistent information about what the appropriate response is. At some precincts voters
were directed to go to an alternative voting location where they were actually supposed to vote. So, they weren't on the rolls at that particular precinct but they were on the rolls in another precinct.

At other locations, though, no such information was provided, and voters were instructed that they could cast a provisional ballot because they were not included on the rolls.

What the voters weren't always told at those precincts I'm finding, or I'm finding inconsistent information about it is that if they cast a provisional ballot at the incorrect precinct the provisional ballot is not counted. So those folks are effectively disenfranchised, not because they're making a conscious choice but because they lack good information.

And, again, I don't need malicious animus or discriminatory animus to see that that has, as you said, a real world impact on folks. And I do live in the real world. I live in the state. I live among the men and women who are suffering the consequences of this, who are frustrated by it, who talk in terms of I'm ready to give up, I don't think it matters if I register to vote, I don't think it matters if I show up to vote, because there is always going to be one
more impediment placed in front of me.

And I think that's a real shame. And I think that's something that Secretary of State Merrill is well aware of. And, again, I do need to give him credit for what he has tried to do in our state. I appreciate what he has tried to do. What I'm trying to say -- and I think this is what we've heard in the testimony following Secretary of State Merrill in our hearing -- is that those good intentions are also not sufficient. Within the real world those good intentions don't solve the fundamental impediments that we're seeing put in place.

COMMISSIONER ADEGBILE: Thank you.

CHAIR LHAMON: Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you. I love your passion.

I was very struck by the discussion in the voter turnout in the testimony by the Alabama ACLU that he shared about the fact that you had people at the polling places who were incorrectly telling voters they were not allowed to vote a regular ballot because their address didn't match the ID, when that in fact is not the law. And I wanted to understand, it seemed to be coming from a probate judge.

So, what is the role of a probate judge in
elections?

MS. CARROLL: Well, thank you for that question. And before I answer it directly I wanted to also let you all know that we are actually having a meeting next week in which we are deciding which probate judges we want to speak to, because that became apparent that there was a big gap in the testimony that we had received at our hearing in February, that while the secretary of state promulgates the statewide policies, it's the probate judges who are the feet on the ground who are making decisions when an issue arises in a particular precinct.

So, two things happen. One thing that happens is the precinct chair has to make a decision. And I have with me the Alabama Election Handbook which Secretary of State Merrill finally shared with me and I have now read in complete. That indicates the precinct chair makes the initial decision about whether or not a voter should pass the provisions ballot. If there are questions or if the voter contests the decision by the precinct chair, it's the probate judge within that county, it's usually the chief probate judge, who makes the decision about how whatever irregularity or question should be resolved.
So, one of the big topics that came up at our hearing was the probate judges are receiving inconsistent information. They're often not attending the training sessions offered by the secretary of state that inform them of what's in this book.

Secretary of State Merrill since our hearing has actually posted on his website a summary, an 11-page summary that are the nuts and bolts of what voting regulations and rules are. So, again, I'm grateful for him to do that. However, I would like to see some more consistent training for the probate judges.

And I think one of the things our committee has discussed as we started to work on our report is that we have this concern that probate judges just aren't getting the information they need to make those good decisions.

So, I haven't probed with probate judges yet. I can't tell you exactly what happened in those particular cases, but that is what's coming next for us.

COMMISSIONER NARASAKI: I was wondering because I, I think in some states that where the secretary of state is in charge of enforcing the state law that there are election protection efforts, right?
And so attorneys, when something like this happens, will often call the secretary of state and ask the secretary of state to please instruct the person at that local place what the correct law is.

Is that -- there's no system of that then?

MS. CARROLL: I mean, you could. I mean, that is one possibility. But the routine, you know, chain of command is to go to the probate judge. From the probate judge then to go to someone in the Secretary of State's Office. There are also election commissioners in between. An election commissioner could field a response.

You know, I told the story at our hearing that the first time I voted in Alabama I showed up, I had sent in my voter registration card, I thought I was registered to vote. I showed up, I wasn't on the rolls. So I was told that I had to cast a provisional ballot.

I had actually taken a photograph of my voter registration card before I sent it in because I'm a lawyer, that's what I do. And I showed it to an individual and I showed him I had mailed it. He was my precinct captain. We contacted the election commissioner in Jefferson County, who was actually extremely helpful. And I did have to cast a
provisional ballot, but he contacted me the next day to tell me that I had been confirmed as properly voting in the correct precinct and that my provisional ballot would be cast.

Now, I think I'm a little unusual in that I react that way. My husband was mortified, my children are mortified every time I tell this story. But it does suggest to me that if you're pushy enough you can get the correct outcome. I just don't want to have to depend on every individual to be quite so pushy.

I'm also voting at an off time. I'm fortunate, I'm a professor, I can go and vote at 10:00 a.m. and beat the crowd where there's nobody else at the precinct. And I can get right through to the election commissioner. Not everyone can do that, I recognize.

Yes, so that's what we're really trying to do in making our recommendation.

COMMISSIONER NARASAKI: It also sounds like probate judges are elected, so there might be other ways of correcting problems.

So, the second thing I want to ask is Mr. Bruin also testified that in some places there was actually police intimidation. And it wasn't clear to
me whether that was also in Mobile County or more widespread than that.

MS. CARROLL: So, there were media reports as well as Twitter accounts of police intimidation. I have tried to track some of those down, with limited success.

I was, I was not able to speak to anyone in Mobile County. I did speak to the sheriff's departments in Jefferson County and Shelby County which are two high population counties in Alabama. In both of those instances I was told that there were sheriff offices present -- officers present to keep the line orderly and to make sure people weren't stepping in and out of line.

Alabama requires you to be in line at the time the polling place closes in order to cast a ballot. So, the indication I got is that's why sheriff's officers were present. I was told by one sheriff's office -- and I apologize, I can't remember which county it was in, if it was Shelby or Jefferson County -- that there was a sheriff who recognized one individual who had a warrant in the line, and informed the individual of the warrant. Though the office informed me they did not remove the individual from the line.
So the individual was able to vote but was informed that they had an outstanding warrant and would be taken into custody afterwards.

COMMISSIONER NARASAKI: That would be a distinct deterrent to wanting to go to vote I would assume.

MS. CARROLL: Well, and I would think that if I was further down in the line and perhaps had similar concerns I might suddenly find myself needed elsewhere as well. So that was my other fear; right?

It's not only deterring people who --

COMMISSIONER NARASAKI: Right.

MS. CARROLL: -- have warrants who are being talked to by the sheriff's office, but if you're further down the line and you're worried, you're stepping out of line.

COMMISSIONER NARASAKI: Yeah, well, and we also have an extraordinary time right now where the relationship with police and communities is not often a healthy one. So that is a problem.

MS. CARROLL: I agree.

COMMISSIONER NARASAKI: Thank you.

CHAIR LHAMON: Any further questions?

MS. CARROLL: There is actually one other thing I would like to say, and it was in response --
actually I looked up some data in response, and I apologize, I don't know the commissioner's name who asked that question about free IDs. And I do want to emphasize Alabama does offer free identification.

But we did hear testimony consistent with what we heard from the chair in Indiana that the impediment around the idea often comes in the form of folks who either don't have birth certificates, who are paying fees. The testimony we heard was it was fees up to $100 to get a certified copy of the birth certificate in our state, which means that the free ID is actually not free. It's a significant incursion on familial budgets.

And I can remember a time in my own life when $100 would have made the difference between me having basic things that I needed and not having those basic things. So I would not have gotten my ID if that had been the case. So I just wanted to add that.

COMMISSIONER NARASAKI: Yes. I lost my ID once and I actually had to fly back to my state because I had to personally present myself and sign an affidavit in order to get it. So not only was it the fee but I had to actually pay to fly back to get it.

CHAIR LHAMON: I know that page 24 of your summary of evidence you also include information about
people having to travel to replace a photo ID and the cost of up to $100 as well. So thank you.

MS. CARROLL: Right.

CHAIR LHAMON: Some Commissioners who are here today may have some sympathy for having had to travel in a similar way to be able to vote. I'll leave it there.

I thank you very much for your testimony today. I noticed that your -- the paper that we received is a summary of the testimony received from the Alabama State Advisory Committee. And it sounds from your testimony like there is much more work ongoing still among the State Advisory Committee members. And so I look forward to what will be your ultimate report.

But I very much appreciate the committee's having taken their time to prepare what is, it seems to me, a very disciplined summary of testimony that ranged perspectives that the committee received is consistent with what I heard when I was there. So it's also nice for me to be able to read.

And in particular I appreciate what you say at page 8 of the summary that you are providing a boots-on-the-ground view of the current status of access to voting in the state of Alabama. So, thanks
very much to you and to your fellow committee members for that summary and for the ongoing work that you're doing.

MS. CARROLL: Thank you for having me.

CHAIR LHAMON: Thank you.

Before we turn to the next item on our agenda I just want to note that we also have here present the Chair of the New Mexico State Advisory Committee, Chair Sandra Rodriguez, in the audience. And so, thank you very much for being with us. And look forward to talking with you after this meeting.

Okay. So the next item is a discussion and vote on the fiscal year 2019 program planning.

D. DISCUSSION AND VOTE ON FISCAL YEAR 2019 PROGRAM PLANNING

CHAIR LHAMON: For fiscal year 2019 we already have two projects that we are moving forward with a briefing scheduled in November on federal civil rights enforcement efficacy, and our already-approved project on the condition of confinement for women.

I understand from our general counsel that the second project paper has sufficiently changed that the commission needs to approve the current proposed description. So Commissioner Kladney has circulated the revised proposal for the Women in Prison Project.
We'll discuss that now.

And to begin that discussion is there a motion?

COMMISSIONER KLADNEY: Yes, Madam Chair.

Dave Kladney. I'd like to make a motion to approve the amended version of Women in Prison Project.

It initially was a statutory enforcement report and then got moved off to become a regular briefing report. And as a result, we were able to expand the research on the project. We clarified the basis of our investigation and expanded that somewhat. And we added sections on the parental rights and disparities in education and vocational programming as well.

So, I believe everybody's had sufficient time to review it. And I haven't heard any objections to it. So I would move its approval.

CHAIR LHAMON: Thank you.

Is there a second?

COMMISSIONER NARASAKI: I second.

CHAIR LHAMON: Thank you. Commissioner Kladney, I thank you for your leadership in taking over this project which was first proposed before I joined the commission. And I've heard, commensurate with your motion, a description of a bit of the work
that you're doing.

Is there further introduction that you want to give to us as we begin the discussion?

COMMISSIONER KLADNEY: Well, we've met with quite a few people regarding the subject. And initially we were focusing more on the federal place in incarceration for women. And we've expanded somewhat to the states as well.

It's a subject that really hasn't taken up much of America's time yet. However, the largest growing prison population today is women. And as we've looked into it we've seen that vocationally they're not getting the education they need, as well as being placed far distances from their families and having difficult times holding on to their children, as a result of being able -- not being able to defend themselves in court if there's a termination procedures and things like that.

It's quite an extensive problem that really no one has really looked at. So I'm quite excited for the commission to take an initial look.

CHAIR LHAMON: Thank you, sir.

Further discussion on this motion?

(No response.)

CHAIR LHAMON: Hearing none, I'll call the
question and take a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I abstain.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Abstain.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes.

The motion passes. No Commissioner opposed, two Commissioners abstained, all others were in favor.

To move forward with the Fiscal Year '19 program planning, I understand from the staff director that we currently have capacity, financial and otherwise, to take on one additional project.

I open the floor now for motions on projects for consideration. Commissioner Adegbile, I
know you moved earlier. Now's your time.

COMMISSIONER ADEGBILE: Great. Thank you very much. I would like to open the floor for a discussion and vote on a proposed topic that purports to examine the EEOC's work and the federal government's response to claims of sexual harassment in the workplace.

We have put together a concept paper that has had the benefit of some input from commissioners who advised that they thought that it could be strengthened in particular ways. We've made efforts to tackle this very broad topic in a way that is achievable for OCRE based on current resources.

The topic is so big that there are pieces of this that one might bite off and not be able to do it in an adequate amount of time. And so we've tried to scale it in a way that could make a contribution at this time for this very important issue about equality, human dignity, and the opportunity to work free of discrimination for people and women in our workplaces is a national story that is receiving the attention that it has long deserved.

And so I would like to open the floor for discussion about the concept paper that we have shared with all of the commissioners and have that
discussion, followed by a vote.

CHAIR LHAMON: Thank you. Is there a second?

COMMISSIONER YAKI: Point of order, Madam Chair.

CHAIR LHAMON: Yes, Commissioner Yaki?

COMMISSIONER YAKI: I am a little confused about how we're going to be dealing with this. Are we just going to be -- if we only have one availability on the runway are we just going to discuss one as they vote and we're not going to discuss the others? Or are we going to be able to have, to have presentations by the authors of the other people who have also put things on the table so at least there is discussion amongst the commission of all the different topics that are up there? Or are we just going to go and vote this one through and that's going to be the end of it?

CHAIR LHAMON: My plan is to do an up or down vote on each project so moved. And right now there's a motion and not yet a second on Commissioner Adegbile's paper.

COMMISSIONER YAKI: But point of order, Madam Chair. What I don't understand, you said that there is availability for one additional project. So
if this project were to get a vote of yes, there would be no reason to discuss the other projects. And I think that there is a reason that everyone should be allowed to know what other projects have been proposed by the commissioners so that they, not just other commissioners, but the public as well.

So under your, under your system there would be no reason to bring up any other topic if this topic were to be discussed first and voted upon because then the one slot has been filled.

CHAIR LHAMON: Commissioner Yaki, I don't object to moving to discuss another project following a vote on this one. I also don't object to discussing the projects before voting on this one.

At the moment we have a motion to discuss this project. And it is not yet seconded, so there is no vote pending on that project. I hear your --

COMMISSIONER YAKI: Well, I would like, then I would like to move a substitute motion that other commissioners with other projects should be allowed to bring them up as well, and then at the end, the conclusion of those, we may discuss and then vote upon which project shall be, shall be chosen.

CHAIR LHAMON: Thank you. Is there a second for either of the motions now pending?
COMMISSIONER NARASAKI: I second Commissioner Yaki's motion or substitute motion.

CHAIR LHAMON: Thank you. Commissioner Yaki, would you like to proceed with an additional paper to discuss?

COMMISSIONER YAKI: Well, I would just like to say that I think that everyone who had one has the right to discuss it. And I believe that Commissioner Adegbile was just giving the layout for his discussion. And I would say that he should be allowed to finish. And then, in turn, commissioners who have concept papers would then be allowed to go in turn.

So I would allow Commissioner Adegbile to go first and then, you know, I don't mind going second, perhaps Commissioner Timmons-Goodson might want to go next, or whoever else has a paper that they'd like to put up for discussion.

CHAIR LHAMON: Thank you for that consideration.

VICE CHAIR TIMMONS-GOODSON: Madam Chair.

CHAIR LHAMON: Madam Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Yes, Madam Chair, I am withdrawing the paper that I put forward. I will not be proceeding with that.
CHAIR LHAMON: Thank you, Madam Vice Chair.

VICE CHAIR TIMMONS-GOODSON: At this time.

CHAIR LHAMON: Thank you. I, too, withdraw the paper that I had proposed. So I don't plan to discuss that at this time.

Commissioner Adegbile, Commissioner Yaki invited further discussion of your paper if you'd like.

COMMISSIONER ADEGBILE: I have nothing further at this point unless there's a particular question, and would yield to Commissioner Yaki to set out his concept paper.

CHAIR LHAMON: Thank you.

Commissioner Yaki, would you like to proceed?

COMMISSIONER YAKI: Sure. Thank you very much.

Colleagues and members of the public, I actually sent out a revised version of this earlier this week. I don't know if you have it or not. But just for the general edification of those who are present, this concept paper I think is extremely, and unfortunately, timely. It deals with the response of the federal government, in particular the Federal
Emergency Management Agency, with regard to Hurricane Maria and its impact to the peoples of Puerto Rico and the U.S. Virgin Islands.

And the concept paper, as I've laid it out, it's interesting, we went through various different iterations. I finally sort of came back to a modified version of my original. Because in order to fully understand, I believe, the civil rights implications of the federal government response to Hurricane Maria one has to expand it in order to compare how the federal government responded to, for example, Hurricane Harvey and its devastating impact on the Houston area and what it did or what it did not do with Hurricane Maria.

There are many instances, there are many reports of the same, it's interesting, the same FEMA regional office serves both Texas, and Puerto Rico, and the U.S. Virgin Islands. There were widespread reports of lack of language access, cultural competency. But more than that, there seemed to be a wide disparity in just the amount of allocation of resources and recovery dollars, too, for the peoples of Puerto Rico and the USVI as compared to the victims of Hurricane Harvey.

This would not diminish the -- at all the
devastation and the harm and the personal loss that occurred to the people in the Houston, Texas area, but it does beg the question of the extraordinary loss of life and the infrastructure problems that accompanied the recovery from Hurricane Maria even to this day, a year later, as another hurricane right now is knocking on the door of one of our, one of our own commissioners.

So, I think that I have, in keeping with concerns about the budget for the commission, I think that the importance of this is that it has never really been examined before by this commission, the idea that there can be a disparate response and allocation in times of national emergency based on national origin, language, or ethnicity. I think it's something that, given the fact that this seems to be occurring more and more, whether we attribute it to climate change or just bad luck, these storms seem to be occurring, having great intensity and greater damage as they hit the parts of our nation.

And because of the lack of any investigation by any other body or this government, it feels timely, and appropriate, and almost necessary for this commission, using its jurisdiction, to be able to step in and ask the questions and have
testimony to do it.

Now, as I said, recognizing the limitations of our budget, I would not propose, I'm not proposing that this be a full briefing report. Instead, I think that, as I said to some of the other commissioners, one thing that I thought that can be useful and should be useful is our ability to shed light on the subject, our ability to bring clarity and create a record for others to review. And sometimes that does not need to be in the form of a full report.

And I think a good, detailed hearing and a record in and of itself can be sufficient to transmit to the public and to the Congress and executive branch so they can read the testimony and see the record and understand the concerns that were brought forward by the panelists and the questions put forth by commissioners in order to have that have an impact on policy in the government.

So that is, in a nutshell, why I want to do this hearing, and why I think it's timely at this time to do it in FY '19 and not push it back to FY '20. I scaled it back. I've cut it down.

And I appreciate your consideration of it.

Thank you.
CHAIR LHAMON: Thank you, Commissioner Yaki.

Anyone else have proposals to discuss or discussion of either of these two proposals?

Commissioner Narasaki?

COMMISSIONER NARASAKI: I don't have a proposal to discuss. But I have been very torn between these two concept papers.

I am very distressed by the FEMA response to Puerto Rico. It's distressing to me because when Katrina hit Louisiana I spent a lot of time on the language access issues where I was told by FEMA that providing a 1-800 help number, and Vietnamese would be giving special benefits to the Vietnamese community who could not use an English line because they would be allowed to speak Vietnamese. Which I just found incredibly ridiculous.

So it's distressing to me to find that FEMA is still not able to respond appropriately, particularly in a language like Spanish, which is certainly easier to access than some of the Asian languages.

I think my challenge on this one is twofold. One is there have been a lot of media coverage both on Maria and on Harvey. And it appears
that there is also potentially disparate responses in Harvey for minority neighborhoods, particularly poor, African American neighborhoods in Texas. So it's difficult to really, I think, compare the two.

And the kind of work that we would want, I would want to be able to see us do I'm not sure that we have the capacity to do.

And, secondly, if we are going to begin, while I agree very much with Commissioner Yaki that one of our roles is to shine a light on these issues, I think it's hard to do a lot of work and not then be able to make some recommendations.

I do appreciate that Commissioner Adegbile has adjusted his paper so that it does not just focus on EEOC who, as a commission like ours, has been starved for resources for many, many years even though they've had an expanding jurisdiction, to actually look at what is going on in at least a couple of the agencies because I believe that some of the Title IX issues begins with the agency efforts and the degree to which they are functioning well and treating seriously the complaints that are being raised by their employees.

So, I lay that out and note that I will be supporting Commissioner Adegbile's concept paper. But
I hope that when Congress looks at our budget, which I believe unfortunately will not be until after the midterm election, that if we get a sufficient increase in our budget that we would consider adding a look at the situation with FEMA at a later time.

CHAIR LHAMON: Thank you.

COMMISSIONER HERIOT: I just want to say that I think both these proposals are interesting and worthy. I'm sad we can only do one of them. And I agree with Commissioner Narasaki that if we get more resources it would be nice to do both.

I think it's important not to pre-judge these issues. And in that regard I had dinner last night with an attorney from the Department of Homeland Security and he reported an anecdote that I think is apropos here.

He was actually wearing a Department of Homeland Security T-shirt while traveling, not in the last few weeks, but maybe a year ago, maybe less than a year ago. And someone came up to him and demanded to know, "Do you work for the Department of Homeland Security?" And he was a little taken aback. "Yes."

And the guy said, "The work you guys did in Puerto Rico for Hurricane Maria was great, just
absolutely fabulous."

And so somebody thinks they did a good job. So as I said, we must withhold judgment on that issue.

CHAIR LHAMON: Thank you.

Any further discussions on these proposals or another proposal?

VICE CHAIR TIMMONS-GOODSON: Madam Chair.

CHAIR LHAMON: Madam Vice Chair.

VICE CHAIR TIMMONS-GOODSON: Yes. I was just going to say that this issue highlights the challenge that our agency has been facing for some time. And that one deals with difficult choices, having the desire, even the will to perform our duties as set out by statute but yet not having the resources to make it happen.

And so I do agree that both of the proposals are worthy. And I hope that we'll be able to at some point do both. But at this point I would be supporting Commissioner Adegbile. And point out that I don't believe that anyone, any agency is investigating or doing anything with the sexual harassment, but there are efforts underway that are looking into what's going on where FEMA is concerned.

And so I'd be supporting Commissioner
CHAIR LHAMON: Thank you.

Further discussions from folks on the phone or in the room?

(No response.)

CHAIR LHAMON: I'll offer I, too, share the view that these are very, very compelling proposals. I will say that I'm also compelled by the proposal I withdrew, and I was compelled by the proposal that the Vice Chair withdrew. So I think we have had a menu of very important civil rights options that we've been thinking about. And it is very challenging to have to limit ourselves to what is within capacity for us to do, and also challenging to turn away from issues that are so important to our fellow Americans and also to us in this room.

Out of respect for the seriousness of the issues related to catastrophe responses and hearing from the views of fellow commissioners today, I would move to table that motion to a time when our resources are more certain, when we might be able to have a fuller discussion with the staff director about capacity to address the issue, and perhaps to take up some of the issues that other commissioners have raised. I offer that for Commissioner Yaki's
consideration.

(No response.)

CHAIR LHAMON: And hearing no interest, I invite --

COMMISSIONER YAKI: Sorry. I was on mute.

CHAIR LHAMON: I'm sorry, couldn't hear you. Oh.

COMMISSIONER YAKI: I was on, I was on mute, so.

CHAIR LHAMON: Welcome to un-mute.

COMMISSIONER YAKI: So give me a second. Make sure there isn't any background noise going on.

If you would like to table the motion --

CHAIR LHAMON: Commissioner Yaki, I heard you say "If you would like to table the motion," and then I didn't hear what you said after that.

COMMISSIONER YAKI: I'm sorry. What?

CHAIR LHAMON: I heard you say, "If you would like to table the motion," and then did not hear what you said after that.

COMMISSIONER YAKI: I said if you would like to table the motion I would not object.

CHAIR LHAMON: Thank you. Okay.

So then we can proceed with Commissioner Adegbile has moved for consideration of his proposal.
That motion has not yet been seconded.

Is there a second?

VICE CHAIR TIMMONS-GOODSON: I second.

CHAIR LHAMON: Thank you. I'll proceed with a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I'm utterly confused now. I take it a vote of no would be a vote for Commissioner Yaki's project?

CHAIR LHAMON: No. This is an up or down vote on Commissioner Adegbile's project.

COMMISSIONER HERIOT: So we're --

PARTICIPANT: Mike has tabled his project.

COMMISSIONER HERIOT: Yeah, but that does not mean he's tabled his desire to have that, his project be picked, or does that mean just procedurally he's happy to have it done in the form of a vote on Commissioner Adegbile's program.

CHAIR LHAMON: Commissioner Yaki, do you want to speak to your feelings on that?

COMMISSIONER YAKI: Why don't we just make it easier. At this point I withdraw my motion to have this for consideration. And if there's no objection
that can just be it.

CHAIR LHAMON: Thank you. So, so now we'll proceed with an up or down vote on Commissioner Adegbile's.

COMMISSIONER HERIOT: And it's the only, only proposal that is being considered at this point?

CHAIR LHAMON: It is.

COMMISSIONER HERIOT: Then I'm for it.

CHAIR LHAMON: Okay, thank you.

(Laughter.)

COMMISSIONER ADEGBILE: Sometimes that's the only way one can win.

(Laughter.)

CHAIR LHAMON: You'll take them when you find them; right?

Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Abstain.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.
CHAIR LHAMON: And I vote yes.

The motion passes. One commissioner abstained, no commissioner opposed, all others were in favor.

The next item is a discussion and vote on fiscal year 2020, 2020 program planning for the Statutory Enforcement Report.

E. DISCUSSION AND VOTE ON

FISCAL YEAR 2020 PROGRAM PLANNING

FOR STATUTORY ENFORCEMENT REPORT

CHAIR LHAMON: For fiscal year 2020 we'll continue what we began last year, Commissioner Heriot's suggestion, so approving a Statutory Enforcement Report Project two years in advance to allow commission staff time for planning and other necessary work in advance.

I'll open the floor for motions now on projects for consideration.

COMMISSIONER KLANDNEY: Madam Chair, Kladney here.

CHAIR LHAMON: Commissioner Kladney.

COMMISSIONER KLANDNEY: I'd like to move to approve my project on sub-minimum wage. I believe it's important that we look into this disability issue. We haven't -- the last disability issue we've
really done as a pure disability issue I think was the
busing of mentality disabled people from state to
state.

We believe that this is an important
issue. It's highly technical and it hasn't received a
lot of attention. It's one of the only statutes
that's explicitly discriminatory on the basis of
disability. And it's important to look into see just
not how, only how the program's functioning but how
it's being overseen and how it's being governed, and
how people that are using the program, and how people
with disabilities are or aren't benefitting from it.

There have been reports of wages of below
a dollar. And I think that it would be right, a right
time for the commission to look at a subject like
this, especially when it comes to these kinds of
disabilities.

CHAIR LHAMON: Thank you, Commissioner
Kladney.

Is there a second to that motion?

COMMISSIONER NARASAKI: I second.

CHAIR LHAMON: Is there any other
discussion of the motion?

Commissioner Narasaki?

COMMISSIONER NARASAKI: I very much
strongly support this as a -- this topic as a hearing.

I think however well-intentioned the existing law
might be there has been a lot of evolution on the
issue of mental and other disabilities. And it's time
to examine whether in fact this law is fair and
whether it is in fact working as intended or can be
improved or removed.

So I am open-minded on the topic but I
think it's a very important topic to look at.

CHAIR LHAMON: Thank you.

I will say that in my last life when I was
Assistant Secretary for Civil Rights at the Department
of Education I worked with the Department of Justice a
bit on an investigation mentioned in your concept
paper, Commissioner Kladney, about the Rhode Island
settlement for students with disabilities who were in
segregated settings and not being prepared effectively
for a workplace. Those were among the more harrowing
facts that I investigated and what I knew about in
that time.

And I would, I would welcome our
investigation of progress with respect to that
settlement and also the degree to which those
conditions proliferate in other places. So I
appreciate your suggestion that we take on a
disability-focused topic generally, and that we take
on this specific topic which I find very compelling.

COMMISSIONER KLASDNEY: Thank you, Madam
Chair.

CHAIR LHAMON: Any further discussion on
this topic?

(No response.)

CHAIR LHAMON: Hearing none, I'll call the
question and take a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: We don't get any
other choices on this one either?

CHAIR LHAMON: I invited motions and heard
none.

COMMISSIONER HERIOT: Oh, okay.

COMMISSIONER ADEGBILE: Russian elections.

(Laughter.)

CHAIR LHAMON: Wow, that's very dark for
today.

COMMISSIONER HERIOT: I'm willing to go
with this one.

CHAIR LHAMON: Okay. Thank you, a yes.

Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.
CHAIR LHAMON: Thank you.
Commissioner Kladney?
COMMISSIONER Kladney: Yes.
CHAIR LHAMON: Commissioner Narasaki?
COMMISSIONER NARASAKI: Yes.
CHAIR LHAMON: Commissioner Yaki?
COMMISSIONER YAKI: Aye.
CHAIR LHAMON: Vice Chair Timmons-Goodson?
VICE CHAIR TIMMONS-GOODSON: Yes.
CHAIR LHAMON: And I vote yes.
The motion passes unanimously.
So, now we will move to our amended agenda item, a discussion and vote on an administrative instruction regarding denoting commissioner abstention and recusal on commission reports.

G. DISCUSSION AND VOTE ON AN ADMINISTRATIVE INSTRUCTION REGARDING DENOTING COMMISSIONER ABSTENTION AND RECUSAL ON COMMISSION REPORTS

CHAIR LHAMON: Is there a motion to open the floor for discussion?
COMMISSIONER ADEGBILE: So moved.
VICE CHAIR TIMMONS-GOODSON: Yes. I'll second that.
CHAIR LHAMON: And, Madam Vice Chair, I appreciate your seconding Commissioner Adegbile's motion for approval of a proposal I believe you sponsored, Madam Vice Chair. So would you like to begin our discussion?

VICE CHAIR TIMMONS-GOODSON: Yes. Specifically I'm asking or the motion is asking that we adopt the following administrative instruction to be placed in Administrative Instruction 6.06. I reads as follows, I believe each of you have a copy:

"Commissioners who are financially recused from working on the topic of a report should notify the designated agency ethics officer and should not participate in any portion of the project. The staff director will denote recusal in the written report by 1) placing an asterisk beside the recused commissioner's name when listing members of the Commission, and 2) placing text at the bottom of the page explaining that the asterisk denotes recusal.

"Commissioners wishing to abstain should notify the staff director during the vote approving the report. The staff director will denote abstentions in the written report by 1) placing a caret beside the abstained commissioner's name when listing members of the Commission, and 2) placing text
at the bottom of the page explaining that the caret
denotes abstention."

As you're probably aware, currently the
report only lists the commissioners but doesn't
indicate whether any commissioner abstained or was
recused from voting. I have a concern that the
reports did not provide such information on last year.

In another vein, I was seeking, I was
seeking to answer questions regarding my opinions and
views on issues and prior statement on issues, and it
came to my attention than that, while I had registered
a recusal or an extension that was not indicated
anywhere. And it was reasonable for one to assume
that I was in support of the report or the statement.

And so, I thought it might be a good idea
for us to consider whether we wanted to in some way
make it clear how commissioners stood on reports and
things. And so that's the genesis of this.

CHAIR LHAMON: Thank you, Madam Vice Chair.

Any other discussions, motions?

Commissioner Heriot?

COMMISSIONER HERIOT: I just want to seek
a clarification, for the record mainly.

My understanding of this is that we are
going to be voting solely on adding this section on
recusal. We were given a paper that restates some of the other adjacent sections. And I just want a clarification that this is only intended to add that section and that it will have no effect on our current practices for commissioner statements, rebuttals, and surrebuttals.

So, Madam Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Yes. My understanding and my intention was simply to deal with this issue of recusals and abstentions.

What I did following Cheryl Cozart's work with me on this, we sent the matter to our general counsel for her to look at it. And she made some suggestions. And we incorporated those. And she added that while this is not what you asked about, this is what I have found in my research, that dealing with the matter that you've just raised, Commissioner Heriot.

And she said that you could, if you wanted, consider, you know, placing this in front of you. And I indicated that, you know, I only took this up and that's as far as I wanted to go.

So, my motion today is simply to adopt the language that I've read and, you know, at a later time we can do whatever it is that Commissioner Heriot is
proposing.

COMMISSIONER HERIOT: Thank you.

COMMISSIONER YAKI: I have a question.

CHAIR LHAMON: I'm sorry. Just one moment.

I'm sorry, Commissioner. I'll just confirm that I show that all we're doing with this is adding this text and not modifying the existing practices.

But, Commissioner Yaki, do you want to go ahead?

COMMISSIONER YAKI: I'm just wondering if I'm working on a brief involving the abstention doctrines, do I have to abstain from this?

CHAIR LHAMON: No.

COMMISSIONER HERIOT: You're confusing us.

CHAIR LHAMON: But thank you. And good luck with the brief.

So if there's no further discussion, I'll call the question, take a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney?
COMMISSIONER Kladney: Yes.

Chair Lhamon: Commissioner Narasaki?

Commissioner Narasaki: Yes.

Chair Lhamon: Commissioner Yaki?

Commissioner Yaki: I really want to abstain, but I'll say aye.

Chair Lhamon: Thank you.

Vice Chair Timmons-Goodson: Thank you.

Chair Lhamon: Vice Chair Timmons-Goodson?

Vice Chair Timmons-Goodson: Yes.

Chair Lhamon: And I vote yes.

The motion passes unanimously.

Next we'll hear from the Staff Director Mauro Morales for the monthly staff director's report.

F. MANAGEMENT AND OPERATIONS

Staff Director's Report

Staff Director Morales: Thank you, Madam Chair.

In the interests of brevity, getting the commission meeting to its end, I'm always available to discuss any particular issue contained in the report with a commissioner or commissioners.

So, with that I thank you. I really want to just do a shout out to all our staff on their hard work, special assistance, and all of the commissioners
in getting our Statutory Enforcement Report out this week. Outstanding team effort.

And I want to acknowledge there's so many people that played an important role in this. I want to make sure that we, you know, include everybody. But I know if I do I'll leave people out. But, Madam Chair, I also appreciate your leadership in helping us, and all the commissioners, in getting this over the finish line.

So, thank you very much.

CHAIR LHAMON: Thank you. I echo those thanks. This was an exciting week to see our annual Statutory Report out and published.

And I will also note that we are coming within weeks of the end of our fiscal year, so I know that our staff are working intensely hard to close our books and bring us to the close of this fiscal year. So, I thank all the staff for their work on that effort as well. And I look forward to the coming fiscal year.

III. ADJOURN MEETING

CHAIR LHAMON: So, with nothing further, I hereby adjourn our meeting at 11:49 a.m. Eastern Time. Thank you.

(Whereupon, at 11:49 a.m., the above-
entitled matter was concluded.)