

U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, SEPTEMBER 14, 2018

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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*

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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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P R O C E E D I N G S

(10:00 a.m.)

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.

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1 CHAIR LHAMON: Thank you.

2 A quorum of the Commission is present.

3 Is the court reporter present?

4 COURT REPORTER: Present.

5 CHAIR LHAMON: Thank you.

6 Staff director present?

7 STAFF DIRECTOR MORALES: Present.

8 CHAIR LHAMON: Thank you.

9 The meeting now comes to order.

10 **I. APPROVAL OF AGENDA**

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

13 COMMISSIONER ADEGBILE: So moved.

14 CHAIR LHAMON: Thank you. Is there a
15 second?

16 VICE CHAIR TIMMONS-GOODSON: Second.

17 CHAIR LHAMON: Thank you.

18 Are there any amendments to the agenda?

19 COMMISSIONER ADEGBILE: Madam Chair, I
20 have an amendment.

21 CHAIR LHAMON: Commissioner Adegbile.

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

25 CHAIR LHAMON: Thank you. We can take

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1 that up in the program planning discussion. But good
2 to know. Thank you.

3 COMMISSIONER ADEGBILE: Sure.

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

8 CHAIR LHAMON: Thank you. Is there a
9 second?

10 COMMISSIONER ADEGBILE: Second.

11 CHAIR LHAMON: Thank you.

12 Are there any other amendments?

13 (No response.)

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

17 All those in favor say aye.

18 (Chorus of aye.)

19 CHAIR LHAMON: Any opposed?

20 (No response.)

21 CHAIR LHAMON: Any abstentions?

22 (No response.)

23 CHAIR LHAMON: Hearing none, the motion
24 passes unanimously.

25

II. BUSINESS MEETING

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

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

7 **A. PRESENTATION BY**
8 **INDIANA ADVISORY COMMITTEE CHAIR**
9 **ON THE COMMITTEE'S RECENTLY RELEASED REPORT,**
10 **VOTING RIGHTS IN INDIANA**

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

13 CHAIR LHAMON: Thank you. Good morning.

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

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

21 The Indiana Advisory Committee appreciates
22 the opportunity to support the Commission's 2018
23 Statutory Enforcement Report and Assessment of
24 Minority Voting Rights Access in the United States.
25 First, on behalf of the Indiana Advisory Committee,

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1 please allow me to express appreciation to those that
2 provided written comments, as well as enlightening
3 testimony during the hearings and forums held in
4 Indiana.

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

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

18 The committee heard testimony from
19 community members, academics, legal professionals,
20 government officials, party representatives, and
21 community advocacy groups. As indicated in the
22 report, the committee approached the project from a
23 neutral posture. However, during the course of the
24 testimony the committee began to identify clear
25 barriers to voting in Indiana that warrant the

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1 attention of this body.

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

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

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

22 While in 2008 the Supreme Court upheld the
23 voter identification law in the case Crawford v.
24 Marion County Election Board, many panelists
25 questioned if the law was ever necessary. Moreover,

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1 there was testimony that the purported failsafe, which
2 is the ability to cast a provisional ballot, is
3 problematic at best. The panelists described many
4 shortcomings of provisional ballots that included poll
5 workers that do not always adequately explain the
6 process to voters. Consequently, the voters do not
7 understand that they have to return with the proper
8 identification for their vote to count.

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

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

19 I'd like to transition now to talk a bit
20 about the purging of votes -- or voters. It has been
21 reported that close to 500,000 individuals have been
22 purged in Indiana since 2014, representing 8 percent
23 of the voting population. The Indiana Secretary of
24 State's office reported following the federal
25 guidelines outlined in the National Voter Registration

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1 Act, also known as the Motor Voter Act, were
2 maintaining an active voter participation list.

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

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

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

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

22 The requirements of the NVRA are such
23 that, one, the state must first have an objective and
24 reliable information that voters have changed
25 residence, then leading to two, which is sending a

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1 notification. If voters do not respond or the notice
2 is returned undeliverable, the election office must
3 wait two federal election cycles during which the
4 voter has not voted or appears to have voted, before
5 removal of voters from the rolls.

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

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

22 In June of this year, one month before the
23 law would have been enacted, District Judge Tanya
24 Walton Pratt ruled in that legal challenge that the
25 legislation violates the National Voter Registration

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1 Act and threatens to disenfranchise eligible voters.
2 Judge Pratt opined that while the defendants have a
3 strong public interest in protecting the integrity of
4 voter registration rolls and the electoral process,
5 they have other procedures in place that can protect
6 the public interest that do not violate the NVRA.

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

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

25 The lawsuit alleged that the lone early

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1 voting site in the downtown City-County Building was
2 disenfranchising voters.

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

13 And lastly --

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

19 MS. CLEMENTS-BOYD: That's fine.

20 CHAIR LHAMON: Thank you so much.

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

23 COMMISSIONER NARASAKI: Thank you, Madam
24 Chair.

25 Thank you very much for your hard work.

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1 And I hope you took note that we did incorporate some
2 of your recommendations into the Voting Rights Act
3 Report that the commission issued this week. So we
4 very much appreciate the input from all of our SACs.

5 I was curious as to the statement that
6 there's a newly amended state law that allows
7 immediate removal of voters without them receiving
8 notification before they're labeled inactive if they
9 appear in the Crosscheck Program, which we, in our own
10 report, felt was a very flawed program.

11 MS. CLEMENTS-BOYD: Right.

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

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

19 COMMISSIONER NARASAKI: Oh, that's great.

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

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1 elected? How do they --

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

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

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

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

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

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

22 Thank you.

23 MS. CLEMENTS-BOYD: Right. And I think
24 that that was the opinion of our committee, that it
25 should not require a unanimous vote. And I think that

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1 someone mentioned that we wouldn't have a Voting
2 Rights Act if it required a unanimous vote. So that
3 was definitely a flaw, I think, in the procedures and,
4 actually, in state law.

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

8 Commissioner Kladney, is that correct?
9 Commissioner Kladney, are you on the line?

10 COMMISSIONER KLADNEY: Yes. Yes, I am.
11 It's just a matter of being able to hit the button
12 correctly.

13 CHAIR LHAMON: Thanks very much.

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

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

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

25 We are going a step further and possibly

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

11 CHAIR LHAMON: Thank you. Wonderful to
12 hear.

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

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

25 There's a question from Commissioner

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1 Heriot that she doesn't understand what I was asking.

2 But the issue is when we send our transmittal letter
3 of this report we -- we can also attach the
4 commission's report. And one of the recommendations
5 from the Indiana Advisory Committee is that we issue,
6 the commission issue a recommendation to Indiana
7 Secretary of State to suspend the use of the
8 Crosscheck Program until a more accurate method for
9 identifying voters registered in multiple locations is
10 identified.

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

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

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

19 (No response.)

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

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

24 (No response.)

25 CHAIR LHAMON: Okay, hearing none --

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1 MS. CLEMENTS-BOYD: Sorry we didn't
2 approve the recommendations, Chair Lhamon. And I
3 apologize. But just know that the Indiana Advisory
4 Committee is very committed, and we hope to extend
5 this work beyond this report.

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

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

11 CHAIR LHAMON: Oh, go ahead, Commissioner
12 Kirsanow.

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

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

20 MS. CLEMENTS-BOYD: Some of the testimony
21 did describe that there were instances where they were
22 delivered by a midwife and there was a birth -- or
23 there was no birth certificate. Or in one case I
24 believe there was a birth certificate but the mother
25 actually did put a different name on the birth

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1 certificate than was on the Social Security
2 information, so there was a conflict there.

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

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

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

16 MS. CLEMENTS-BOYD: Other than testimony?
17 This was direct --

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

21 MS. CLEMENTS-BOYD: Yes. That is, that is
22 accurate. The state does provide free ID. And I
23 think that it's a matter of, you know, possibly
24 transportation can be a barrier for individuals in
25 some cases, or just the knowledge of that being

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1 available. I think we assume that everyone knows
2 that, and in some cases I believe that they did not.

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

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

12 COMMISSIONER KIRSANOW: Thank you.

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

15 COMMISSIONER NARASAKI: No. I just wanted
16 to add to what our SAC Chair noted that the problem
17 with free IDs is that you require feeder documents
18 that have -- that are themselves usually charged for.

19 So you still have to pay money in order to get those
20 feeder documents.

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

24 And then, finally, what has happened with,
25 I think, the elderly low income communities and voters

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1 is that they may have midwives. Or, like my
2 grandmother, she lived in a very rural area, and her
3 birth wasn't recorded until two months after her
4 actual birth. So there are a lot of problems that
5 come up, particularly in those days, when less people
6 were born in hospitals and you had less access to the
7 kinds of very limited official documents that are
8 required for these extremely strict IDs.

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

11 COMMISSIONER KLADNEY: Madam Chair,
12 Kladney here. Hello?

13 CHAIR LHAMON: Commissioner Kladney, go
14 ahead.

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

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

24 CHAIR LHAMON: Thank you.

25 Chair Clements-Boyd, thank you again for

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1 your testimony today and for your leadership on your
2 State Advisory Committee. We very much appreciate it.

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

5 CHAIR LHAMON: Thank you.

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

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

14 MS. MARZIANI: Yes.

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

17 **B. PRESENTATION BY**
18 **TEXAS ADVISORY COMMITTEE CHAIR**
19 **ON THE COMMITTEE'S RECENTLY RELEASED REPORT,**
20 **VOTING RIGHTS IN TEXAS**

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

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

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1 travel plans.

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

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

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

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

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

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1 policy choices of our state.

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

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

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

23 These problems are solvable, and they're
24 solvable right here in Texas by state leaders. In our
25 report, on pages 13 and 14, we list dozens of specific

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1 policy changes that our state leaders could adopt,
2 both in the Secretary of State's Office and in the
3 legislature. I would like to stress that these policy
4 recommendations are directly driven by the testimony
5 we received, and we believe reflect common sense.

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

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

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

22 We included reforming the legally
23 problematic restrictions on voter registration drives
24 which currently make voter registration drive activity
25 wrought with legal liability.

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1 And, finally, investing in polling place
2 administration by creating statewide standards,
3 training, and providing resources to the counties to
4 implement this.

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

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

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

21 And so, even though we were disappointed
22 there, we do very much hope that this commission will
23 decide to send our report and recommendations to those
24 state leaders and urge them to take seriously our
25 common sense suggestions to reform elections in Texas

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1 and better protect voting rights.

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

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

7 Commissioner Adegbile.

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

14 MS. MARZIANI: Yes.

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

23 The reason I focus on this item, as you
24 have focused on it, is that there is a sense that
25 there are some measures or issues that are soundly in

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1 the discretion of local election officials and should
2 not be the subject of greater oversight. Some may
3 argue that that was part of the rationale for the
4 Shelby County ruling.

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

12 MS. MARZIANI: Absolutely.

13 COMMISSIONER ADEGBILE: -- to making
14 polling place modifications.

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

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

23 Number one, to your point of local
24 discretion, of course the Texas Election Code actually
25 already sets a floor in this area. It does set a 72-

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1 hour notice period. Our committee certainly thinks
2 that's not enough. Testimony indicated strongly that
3 72 hours is not enough notice.

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

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

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

23 The third point I'll make to you, and
24 something else we highlight in our report, is that
25 right now the Secretary of State's Office does not

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1 collect and analyze provisional voting data. And
2 because of that there is no official source for us to
3 understand just how burdensome polling place changes
4 are. That would, obviously, only give you one
5 indication, but it's an important indication because
6 if somebody shows up to vote at the wrong polling
7 place in Texas they're given a provisional ballot, and
8 that will ultimately not be counted. But there is a
9 record of the provisional ballot.

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

17 COMMISSIONER ADEGBILE: Thank you.

18 CHAIR LHAMON: Commissioner Narasaki.

19 COMMISSIONER NARASAKI: Thank you very
20 much for your hard work. I think Texas is one of the
21 foremost examples that at least I had in mind when I
22 agreed with the finding in our recent report that some
23 states persistently fail to comply with various voting
24 rights laws. And Texas has been challenged, I think
25 maybe competing with North Carolina, for the state

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1 most sued by civil rights groups for the many
2 violations that they continue to resist wanting to
3 allow the minorities who live in their state to vote.

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

11 So very much appreciate --

12 MS. MARZIANI: Absolutely.

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

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

25 And I'm wondering what the debate was in

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1 terms of what was behind all of these very severe
2 restrictions like criminal penalties associated with
3 failure to comply and all of those issues, and what
4 the thinking is in terms of how those could be fixed.

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

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

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

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

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

25 And then, number two, in 2011 some

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

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

12 I will point to footnote 34 of our report.

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

21 COMMISSIONER NARASAKI: Thank you.

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

25 (No response.)

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1 CHAIR LHAMON: Okay, if there's no further
2 questions, we'll move to our next item on our agenda.

3 And thank you, Chair Marziani, for your service and
4 your leadership on the Texas State Advisory Committee
5 and for taking the time to speak with us today about
6 this really terrific report. Thank you.

7 MS. MARZIANI: Thank you.

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

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

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

22 (Laughter.)

23 CHAIR LHAMON: You're not making it
24 better.

25 But you go ahead with the 10 minutes now.

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1 I'm not sure your microphone is on.

2

C. PRESENTATION BY

3

ALABAMA ADVISORY COMMITTEE CHAIR

4

ON THE COMMITTEE'S RECENTLY RELEASED

5

REPORT, ACCESS TO VOTING IN ALABAMA

6

MS. CARROLL: Am I on now?

7

CHAIR LHAMON: Yes.

8

MS. CARROLL: Okay, thank you. So I'm

9

going to skip some of the thank you's, which is not to

10

say I'm not grateful, but I want to get to some of the

11

substance of what I've prepared for today.

12

On February 22, the Alabama State Advisory

13

Committee did hold a hearing in Montgomery to explore

14

the topic of voting regulations in our state following

15

the Supreme Court's decision in Shelby County v.

16

Holder. At that hearing we heard testimony that since

17

the Shelby County decision Alabama has passed a

18

number, and implemented a number, of facially neutral

19

regulations on voting that nonetheless raise some

20

concerns about the opportunity of enfranchisement

21

among the very populations that the Voting Rights Act

22

was designed to protect.

23

The days of the sheriff standing in the

24

doorway of a polling place in Lowndes County may be a

25

thing of the past in Alabama, but nonetheless concerns

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1 consist -- persist, rather, that voting requirements
2 may produce the same effect on poor and minority
3 populations of our state. The methods may be softer,
4 they may be more subtle, but the results of these
5 post-Shelby County regulations are much the same.

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

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

21 So one of the first regulations that
22 Alabama passed following the Shelby County decision
23 was the requirements that voters have identification.

24 Secretary of State John Merrill and John Park
25 testified that ID requirements reduce individualized

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1 voter fraud by ensuring that the person who casts the
2 ballot is actually the person listed on the voting
3 rolls.

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

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

21 In 2015, in response to a budget dispute
22 at the state level, then-Governor Bentley decided to
23 close 31 DMV offices throughout the state of Alabama.

24 In 2016, the Department of Transportation conducted
25 an investigation into these closures, and concluded

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1 that the closures adversely affected counties with
2 majority black populations.

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

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

18 I also pulled the ALEA statistics for the
19 31 closed locations. In 2014, prior to the closures
20 of these DMV offices, they issued 3,149 drivers
21 licenses and over 5,000 learner permits. Under the
22 new reduced hours these offices issued less than 1,000
23 in 2016 and 2017.

24 Counties such as Choctaw, Sumter, Hale,
25 Greene, Perry, Wilcox, Lowndes, Butler, Crenshaw,

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1 Macon, and Bullock are all poor counties. They are
2 among some of the poorest counties in our nation.
3 They're primarily black. Some have populations as
4 high as 82 percent African-American, and all of them
5 lack a full-time DMV office.

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

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

24 That it is possible to acquire the ID does
25 not mitigate that challenge. And so with all due

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1 respect to Secretary of State Merrill, who indicated
2 that anyone who wants to get an ID need only try, he
3 even offered his cell phone number to us at the
4 hearing, and we were told we could call him directly,
5 all the efforts in the world by those individuals are
6 not going to reopen those DMV offices. They're not
7 going to create transportation systems that can get
8 people to county clerk's offices. And I can tell you
9 from firsthand experience stuck on the side of the
10 road in Greene County, where I had absolutely no cell
11 service, they are not going to create the ability to
12 contact the Secretary of State.

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

21 Now this is consistent with testimony by
22 Professor Justin Levitt before North Carolina that in
23 14 years there were 31 credible cases of voter fraud
24 by impersonation out of over a billion ballots passed,
25 and by the testimony of Dr. Kareem Crayton before us

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1 that such type of fraud is simply infinitesimal.
2 Plainly put, it's a poor way to steal an election.

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

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

20 Now this method assumes that a voter
21 receives mail and is able to return the card within a
22 designated period of time. If the voter cannot or
23 does not, he or she is removed from the eligible voter
24 list and must complete a voter re-identification
25 update, either in person or through the mail. So for

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1 many voters we heard testimony that the first time
2 they learned that they were listed as inactive voters
3 was when they actually showed up to cast their ballot.

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

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

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

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

24 In 2017, Alabama amended its statutes so
25 that only designated crimes of moral turpitude produce

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1 disenfranchisement. While the list of these offenses
2 are widely available, admittedly an improvement over
3 the county by county determination that occurred prior
4 to 2017, testimony shows that still 7.62 percent of
5 voters in Alabama are disenfranchised.

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

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

18 I realize I'm at the end of my time, but I
19 want to offer this summary. I've tried to provide you
20 with a snapshot of regulation in Alabama. And I want
21 to be clear, the picture I'm providing you concerns me
22 not because I think it rises to the level of
23 disenfranchisement we saw historically in our state,
24 nor because I believe that these regulations
25 necessarily carry within their body an intent to

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1 discriminate. I am concerned about these regulations
2 because I believe, regardless of that intent, that
3 they may be having the same effect.

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

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

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

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

21 CHAIR LHAMON: Thanks very much, Chair
22 Carroll.

23 I'll open for questions from my fellow
24 commissioners.

25 Commissioner Adegbile.

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1 VICE CHAIR TIMMONS-GOODSON: Madam Chair.

2 CHAIR LHAMON: Madam Vice Chair, go ahead.

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

7 I was particularly touched by the
8 information provided that indeed an effort was made
9 2017 through legislation to try and to do something
10 about felony disenfranchisement. It sounds as if
11 there was some progress made, but certainly not
12 enough.

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

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

25 Is it possible for you to move or to move

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1 closer to the microphone so that we can hear you more
2 clearly?

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

5 CHAIR LHAMON: Thank you.

6 VICE CHAIR TIMMONS-GOODSON: Okay.

7 CHAIR LHAMON: Now we hear you better.

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

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

19 The answer is no, that in order to be re-
20 enfranchised under the state statute you have to go
21 through the Board of Pardon and Paroles. You have to
22 apply for and receive a Certificate of Eligibility to
23 Vote, known as a CERV. Part of the problem in the
24 state is that there is one wide discrepancy on what
25 qualifies as having satisfied the requirements for the

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1 CERV.

2 And one of the primary issues of dispute
3 county by county is whether or not the payment of all
4 fines and fees qualifies. Secretary of State Merrill
5 has issued a statement in response to a question we
6 sent him regarding that issue that you do not have to
7 have paid all fees and fines to be eligible. However,
8 according to various offices, they are still requiring
9 that individuals have completed those financial
10 obligations before they will issue the CERV.

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

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

21 VICE CHAIR TIMMONS-GOODSON: Thank you.

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

24 CHAIR LHAMON: Commissioner Adegbile.

25 COMMISSIONER ADEGBILE: Thank you. Thanks

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1 for that very compelling testimony and articulation of
2 the SAC's work in Alabama. I have more of a statement
3 than a question, though I think there will be a small
4 question in here.

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

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

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1 for some special reason, because they had for many
2 years had impediments put in their way.

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

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

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

19 VICE CHAIR TIMMONS-GOODSON: That seems
20 apparent.

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

23 But what I am finding is that in many of
24 the precincts that I am being directed to by various
25 organizations, including the NAACP, the folks at LDF,

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1 ACLU, is that many of these voters were not completely
2 off the list, they were listed as ineligible. And so,
3 that's that process I discussed where they're making a
4 choice, do I stand in line and fill out this
5 eligibility form, or mail the eligibility form in, or
6 go to the Clerk's Office to fill out the eligibility
7 form, or do I simply walk away?

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

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

23 And, again, this highlights the problem
24 with inconsistent information about what the
25 appropriate response is. At some precincts voters

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1 were directed to go to an alternative voting location
2 where they were actually supposed to vote. So, they
3 weren't on the rolls at that particular precinct but
4 they were on the rolls in another precinct.

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

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

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

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1 more impediment placed in front of me.

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

13 COMMISSIONER ADEGBILE: Thank you.

14 CHAIR LHAMON: Commissioner Narasaki.

15 COMMISSIONER NARASAKI: Thank you. I love
16 your passion.

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

25 So, what is the role of a probate judge in

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1 elections?

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

14 So, two things happen. One thing that
15 happens is the precinct chair has to make a decision.

16 And I have with me the Alabama Election Handbook
17 which Secretary of State Merrill finally shared with
18 me and I have now read in complete. That indicates
19 the precinct chair makes the initial decision about
20 whether or not a voter should pass the provisions
21 ballot. If there are questions or if the voter
22 contests the decision by the precinct chair, it's the
23 probate judge within that county, it's usually the
24 chief probate judge, who makes the decision about how
25 whatever irregularity or question should be resolved.

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1 So, one of the big topics that came up at
2 our hearing was the probate judges are receiving
3 inconsistent information. They're often not attending
4 the training sessions offered by the secretary of
5 state that inform them of what's in this book.

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

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

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

22 COMMISSIONER NARASAKI: I was wondering
23 because I, I think in some states that where the
24 secretary of state is in charge of enforcing the state
25 law that there are election protection efforts, right?

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1 And so attorneys, when something like this happens,
2 will often call the secretary of state and ask the
3 secretary of state to please instruct the person at
4 that local place what the correct law is.

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

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

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

19 I had actually taken a photograph of my
20 voter registration card before I sent it in because
21 I'm a lawyer, that's what I do. And I showed it to an
22 individual and I showed him I had mailed it. He was
23 my precinct captain. We contacted the election
24 commissioner in Jefferson County, who was actually
25 extremely helpful. And I did have to cast a

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1 provisional ballot, but he contacted me the next day
2 to tell me that I had been confirmed as properly
3 voting in the correct precinct and that my provisional
4 ballot would be cast.

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

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

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

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

23 So, the second thing I want to ask is Mr.
24 Bruin also testified that in some places there was
25 actually police intimidation. And it wasn't clear to

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1 me whether that was also in Mobile County or more
2 widespread than that.

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

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

15 Alabama requires you to be in line at the
16 time the polling place closes in order to cast a
17 ballot. So, the indication I got is that's why
18 sheriff's officers were present. I was told by one
19 sheriff's office -- and I apologize, I can't remember
20 which county it was in, if it was Shelby or Jefferson
21 County -- that there was a sheriff who recognized one
22 individual who had a warrant in the line, and informed
23 the individual of the warrant. Though the office
24 informed me they did not remove the individual from
25 the line.

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1 So the individual was able to vote but was
2 informed that they had an outstanding warrant and
3 would be taken into custody afterwards.

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

7 MS. CARROLL: Well, and I would think that
8 if I was further down in the line and perhaps had
9 similar concerns I might suddenly find myself needed
10 elsewhere as well. So that was my other fear; right?
11 It's not only deterring people who --

12 COMMISSIONER NARASAKI: Right.

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

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

21 MS. CARROLL: I agree.

22 COMMISSIONER NARASAKI: Thank you.

23 CHAIR LHAMON: Any further questions?

24 MS. CARROLL: There is actually one other
25 thing I would like to say, and it was in response --

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1 actually I looked up some data in response, and I
2 apologize, I don't know the commissioner's name who
3 asked that question about free IDs. And I do want to
4 emphasize Alabama does offer free identification.

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

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

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

24 CHAIR LHAMON: I know that page 24 of your
25 summary of evidence you also include information about

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1 people having to travel to replace a photo ID and the
2 cost of up to \$100 as well. So thank you.

3 MS. CARROLL: Right.

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

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

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

22 And in particular I appreciate what you
23 say at page 8 of the summary that you are providing a
24 boots-on-the-ground view of the current status of
25 access to voting in the state of Alabama. So, thanks

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1 very much to you and to your fellow committee members
2 for that summary and for the ongoing work that you're
3 doing.

4 MS. CARROLL: Thank you for having me.

5 CHAIR LHAMON: Thank you.

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

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

14 **D. DISCUSSION AND VOTE ON FISCAL YEAR 2019**

15 **PROGRAM PLANNING**

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

21 I understand from our general counsel that
22 the second project paper has sufficiently changed that
23 the commission needs to approve the current proposed
24 description. So Commissioner Kladney has circulated
25 the revised proposal for the Women in Prison Project.

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1 We'll discuss that now.

2 And to begin that discussion is there a
3 motion?

4 COMMISSIONER KLADNEY: Yes, Madam Chair.
5 Dave Kladney. I'd like to make a motion to approve
6 the amended version of Women in Prison Project.

7 It initially was a statutory enforcement
8 report and then got moved off to become a regular
9 briefing report. And as a result, we were able to
10 expand the research on the project. We clarified the
11 basis of our investigation and expanded that somewhat.

12 And we added sections on the parental rights and
13 disparities in education and vocational programming as
14 well.

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

18 CHAIR LHAMON: Thank you.

19 Is there a second?

20 COMMISSIONER NARASAKI: I second.

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

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1 that you're doing.

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

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

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

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

22 CHAIR LHAMON: Thank you, sir.

23 Further discussion on this motion?

24 (No response.)

25 CHAIR LHAMON: Hearing none, I'll call the

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1 question and take a roll call vote.

2 Commissioner Adegbile, how do you vote?

3 COMMISSIONER ADEGBILE: Aye.

4 CHAIR LHAMON: Commissioner Heriot?

5 COMMISSIONER HERIOT: I abstain.

6 CHAIR LHAMON: Commissioner Kirsanow?

7 COMMISSIONER KIRSANOW: Abstain.

8 CHAIR LHAMON: Commissioner Kladney?

9 COMMISSIONER KLADNEY: Yes.

10 CHAIR LHAMON: Commissioner Narasaki?

11 COMMISSIONER NARASAKI: Yes.

12 CHAIR LHAMON: Commissioner Yaki?

13 COMMISSIONER YAKI: Aye.

14 CHAIR LHAMON: Vice Chair Timmons-Goodson?

15 VICE CHAIR TIMMONS-GOODSON: Yes.

16 CHAIR LHAMON: And I vote yes.

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

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

24 I open the floor now for motions on
25 projects for consideration. Commissioner Adegbile, I

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1 know you moved earlier. Now's your time.

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

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

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

23 And so I would like to open the floor for
24 discussion about the concept paper that we have shared
25 with all of the commissioners and have that

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1 discussion, followed by a vote.

2 CHAIR LHAMON: Thank you. Is there a
3 second?

4 COMMISSIONER YAKI: Point of order, Madam
5 Chair.

6 CHAIR LHAMON: Yes, Commissioner Yaki?

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

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

23 COMMISSIONER YAKI: But point of order,
24 Madam Chair. What I don't understand, you said that
25 there is availability for one additional project. So

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1 if this project were to get a vote of yes, there would
2 be no reason to discuss the other projects. And I
3 think that there is a reason that everyone should be
4 allowed to know what other projects have been proposed
5 by the commissioners so that they, not just other
6 commissioners, but the public as well.

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

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

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

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

24 CHAIR LHAMON: Thank you. Is there a
25 second for either of the motions now pending?

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1 COMMISSIONER NARASAKI: I second
2 Commissioner Yaki's motion or substitute motion.

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

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

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

19 CHAIR LHAMON: Thank you for that
20 consideration.

21 VICE CHAIR TIMMONS-GOODSON: Madam Chair.

22 CHAIR LHAMON: Madam Vice Chair?

23 VICE CHAIR TIMMONS-GOODSON: Yes, Madam
24 Chair, I am withdrawing the paper that I put forward.
25 I will not be proceeding with that.

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1 CHAIR LHAMON: Thank you, Madam Vice
2 Chair.

3 VICE CHAIR TIMMONS-GOODSON: At this time.

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

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

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

14 CHAIR LHAMON: Thank you.

15 Commissioner Yaki, would you like to
16 proceed?

17 COMMISSIONER YAKI: Sure. Thank you very
18 much.

19 Colleagues and members of the public, I
20 actually sent out a revised version of this earlier
21 this week. I don't know if you have it or not. But
22 just for the general edification of those who are
23 present, this concept paper I think is extremely, and
24 unfortunately, timely. It deals with the response of
25 the federal government, in particular the Federal

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1 Emergency Management Agency, with regard to Hurricane
2 Maria and its impact to the peoples of Puerto Rico and
3 the U.S. Virgin Islands.

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

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

25 This would not diminish the -- at all the

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1 devastation and the harm and the personal loss that
2 occurred to the people in the Houston, Texas area, but
3 it does beg the question of the extraordinary loss of
4 life and the infrastructure problems that accompanied
5 the recovery from Hurricane Maria even to this day, a
6 year later, as another hurricane right now is knocking
7 on the door of one of our, one of our own
8 commissioners.

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

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

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1 testimony to do it.

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

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

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

24 And I appreciate your consideration of it.

25 Thank you.

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1 CHAIR LHAMON: Thank you, Commissioner
2 Yaki.

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

5 Commissioner Narasaki?

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

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

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

23 I think my challenge on this one is
24 twofold. One is there have been a lot of media
25 coverage both on Maria and on Harvey. And it appears

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1 that there is also potentially disparate responses in
2 Harvey for minority neighborhoods, particularly poor,
3 African American neighborhoods in Texas. So it's
4 difficult to really, I think, compare the two.

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

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

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

24 So, I lay that out and note that I will be
25 supporting Commissioner Adegbile's concept paper. But

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1 I hope that when Congress looks at our budget, which I
2 believe unfortunately will not be until after the
3 midterm election, that if we get a sufficient increase
4 in our budget that we would consider adding a look at
5 the situation with FEMA at a later time.

6 CHAIR LHAMON: Thank you.

7 Commissioner Heriot?

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

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

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

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

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1 absolutely fabulous."

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

5 CHAIR LHAMON: Thank you.

6 Any further discussions on these proposals
7 or another proposal?

8 VICE CHAIR TIMMONS-GOODSON: Madam Chair.

9 CHAIR LHAMON: Madam Vice Chair.

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

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

25 And so I'd be supporting Commissioner

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1 Adegbile.

2 CHAIR LHAMON: Thank you.

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

5 (No response.)

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

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

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1 consideration.

2 (No response.)

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

5 COMMISSIONER YAKI: Sorry. I was on mute.

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

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

10 CHAIR LHAMON: Welcome to un-mute.

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

13 If you would like to table the motion --

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

17 COMMISSIONER YAKI: I'm sorry. What?

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

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

23 CHAIR LHAMON: Thank you. Okay.

24 So then we can proceed with Commissioner
25 Adegbile has moved for consideration of his proposal.

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1 That motion has not yet been seconded.

2 Is there a second?

3 VICE CHAIR TIMMONS-GOODSON: I second.

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

6 Commissioner Adegbile, how do you vote?

7 COMMISSIONER ADEGBILE: Aye.

8 CHAIR LHAMON: Commissioner Heriot?

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

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

14 COMMISSIONER HERIOT: So we're --

15 PARTICIPANT: Mike has tabled his project.

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

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

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

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1 that can just be it.

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

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

7 CHAIR LHAMON: It is.

8 COMMISSIONER HERIOT: Then I'm for it.

9 CHAIR LHAMON: Okay, thank you.

10 (Laughter.)

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

13 (Laughter.)

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

16 Commissioner Kirsanow?

17 COMMISSIONER KIRSANOW: Abstain.

18 CHAIR LHAMON: Commissioner Kladney?

19 COMMISSIONER KLADNEY: Yes.

20 CHAIR LHAMON: Commissioner Narasaki?

21 COMMISSIONER NARASAKI: Yes.

22 CHAIR LHAMON: Commissioner Yaki?

23 COMMISSIONER YAKI: Aye.

24 CHAIR LHAMON: Vice Chair Timmons-Goodson?

25 VICE CHAIR TIMMONS-GOODSON: Yes.

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1 CHAIR LHAMON: And I vote yes.

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

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

8 **E. DISCUSSION AND VOTE ON**

9 **FISCAL YEAR 2020 PROGRAM PLANNING**

10 **FOR STATUTORY ENFORCEMENT REPORT**

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

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

19 COMMISSIONER KLADNEY: Madam Chair, Kladney
20 here.

21 CHAIR LHAMON: Commissioner Kladney.

22 COMMISSIONER KLADNEY: I'd like to move to
23 approve my project on sub-minimum wage. I believe
24 it's important that we look into this disability
25 issue. We haven't -- the last disability issue we've

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1 really done as a pure disability issue I think was the
2 busing of mentality disabled people from state to
3 state.

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

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

18 CHAIR LHAMON: Thank you, Commissioner
19 Kladney.

20 Is there a second to that motion?

21 COMMISSIONER NARASAKI: I second.

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

24 Commissioner Narasaki?

25 COMMISSIONER NARASAKI: I very much

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1 strongly support this as a -- this topic as a hearing.

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

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

10 CHAIR LHAMON: Thank you.

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

21 And I would, I would welcome our
22 investigation of progress with respect to that
23 settlement and also the degree to which those
24 conditions proliferate in other places. So I
25 appreciate your suggestion that we take on a

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1 disability-focused topic generally, and that we take
2 on this specific topic which I find very compelling.

3 COMMISSIONER KLADNEY: Thank you, Madam
4 Chair.

5 CHAIR LHAMON: Any further discussion on
6 this topic?

7 (No response.)

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

10 Commissioner Adegbile, how do you vote?

11 COMMISSIONER ADEGBILE: Aye.

12 CHAIR LHAMON: Commissioner Heriot?

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

15 CHAIR LHAMON: I invited motions and heard
16 none.

17 COMMISSIONER HERIOT: Oh, okay.

18 COMMISSIONER ADEGBILE: Russian elections.

19 (Laughter.)

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

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

24 CHAIR LHAMON: Okay. Thank you, a yes.

25 Commissioner Kirsanow?

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1 COMMISSIONER KIRSANOW: Yes.

2 CHAIR LHAMON: Thank you.

3 Commissioner Kladney?

4 COMMISSIONER KLADNEY: Yes.

5 CHAIR LHAMON: Commissioner Narasaki?

6 COMMISSIONER NARASAKI: Yes.

7 CHAIR LHAMON: Commissioner Yaki?

8 COMMISSIONER YAKI: Aye.

9 CHAIR LHAMON: Vice Chair Timmons-Goodson?

10 VICE CHAIR TIMMONS-GOODSON: Yes.

11 CHAIR LHAMON: And I vote yes.

12 The motion passes unanimously.

13 So, now we will move to our amended agenda
14 item, a discussion and vote on an administrative
15 instruction regarding denoting commissioner abstention
16 and recusal on commission reports.

17 **G. DISCUSSION AND VOTE ON AN**
18 **ADMINISTRATIVE INSTRUCTION REGARDING**
19 **DENOTING COMMISSIONER ABSTENTION AND**
20 **RECUSAL ON COMMISSION REPORTS**

21 CHAIR LHAMON: Is there a motion to open
22 the floor for discussion?

23 COMMISSIONER ADEGBILE: So moved.

24 VICE CHAIR TIMMONS-GOODSON: Yes. I'll
25 second that.

1 CHAIR LHAMON: And, Madam Vice Chair, I
2 appreciate your seconding Commissioner Adebile's
3 motion for approval of a proposal I believe you
4 sponsored, Madam Vice Chair. So would you like to
5 begin our discussion?

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

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

20 "Commissioners wishing to abstain should
21 notify the staff director during the vote approving
22 the report. The staff director will denote
23 abstentions in the written report by 1) placing a
24 caret beside the abstained commissioner's name when
25 listing members of the Commission, and 2) placing text

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1 at the bottom of the page explaining that the caret
2 denotes abstention."

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

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

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

19 CHAIR LHAMON: Thank you, Madam Vice Chair.

20 Any other discussions, motions?
21 Commissioner Heriot?

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

24 My understanding of this is that we are
25 going to be voting solely on adding this section on

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1 recusal. We were given a paper that restates some of
2 the other adjacent sections. And I just want a
3 clarification that this is only intended to add that
4 section and that it will have no effect on our current
5 practices for commissioner statements, rebuttals, and
6 surrebuttals.

7 So, Madam Vice Chair?

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

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

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

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

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1 proposing.

2 COMMISSIONER HERIOT: Thank you.

3 COMMISSIONER YAKI: I have a question.

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

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

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

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

13 CHAIR LHAMON: No.

14 COMMISSIONER HERIOT: You're confusing us.

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

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

19 Commissioner Adegbile, how do you vote?

20 COMMISSIONER ADEGBILE: Aye.

21 CHAIR LHAMON: Commissioner Heriot?

22 COMMISSIONER HERIOT: Yes.

23 CHAIR LHAMON: Commissioner Kirsanow?

24 COMMISSIONER KIRSANOW: Yes.

25 CHAIR LHAMON: Commissioner Kladney?

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1 COMMISSIONER KLADNEY: Yes.

2 CHAIR LHAMON: Commissioner Narasaki?

3 COMMISSIONER NARASAKI: Yes.

4 CHAIR LHAMON: Commissioner Yaki?

5 COMMISSIONER YAKI: I really want to
6 abstain, but I'll say aye.

7 CHAIR LHAMON: Thank you.

8 VICE CHAIR TIMMONS-GOODSON: Thank you.

9 CHAIR LHAMON: Vice Chair Timmons-Goodson?

10 VICE CHAIR TIMMONS-GOODSON: Yes.

11 CHAIR LHAMON: And I vote yes.

12 The motion passes unanimously.

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

15 **F. MANAGEMENT AND OPERATIONS**

16 **STAFF DIRECTOR'S REPORT**

17 STAFF DIRECTOR MORALES: Thank you, Madam
18 Chair.

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

23 So, with that I thank you. I really want
24 to just do a shout out to all our staff on their hard
25 work, special assistance, and all of the commissioners

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1 in getting our Statutory Enforcement Report out this
2 week. Outstanding team effort.

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

10 So, thank you very much.

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

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

21 **III. ADJOURN MEETING**

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

25 (Whereupon, at 11:49 a.m., the above-

1

entitled matter was concluded.)