U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC BUSINESS MEETING

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FRIDAY, OCTOBER 12, 2018

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The Commission convened via teleconference at 10:00 a.m., Catherine Lhamon, Chair, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair

PATRICIA TIMMONS-GOODSON, Vice Chair

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
STAFF PRESENT:
LASHONDA BRENSON
KATHERINE CULLITON-GONZALEZ
PAMELA DUNSTON, Chief, ASCD
ALFREDA GREENE
WARREN ORR
CORRINE SANDERS, CRO
SARALE SEWELL
AHRON SINGER
BRIAN WALCH

COMMISSIONER ASSISTANTS PRESENT:
SHERYL COZART
JASON LAGRIA
CARISSA MULDER
AMY ROYCE
RUKKU SINGLA
ALISON SOMIN
IRENA VIDULOVIC
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OPERATOR: Good day and welcome to the Commission business meeting. At this time, I would like to turn the conference over to Chair Catherine Lhamon. Ma'am, please go ahead.

CHAIR LHAMON: Thank you. This meeting of the U.S. Commission on Civil Rights comes to order at 10 a.m. Eastern Time on October 12, 2018. The meeting takes place over the phone.

I'm Chair Catherine Lhamon. I'd like to confirm each of the Commissioners on the line, so I'll take a roll call here at the outset. Please say present when I say your name. Vice Chair Timmons-Goodson. Madame Vice Chair, if you're speaking, you're on mute. Vice Chair Timmons-Goodson, are you present?

VICE CHAIR TIMMONS-GOODSON: Present, I am present. Thank you.

CHAIR LHAMON: Thank you. See Commissioner Heriot has just joined us in the room. Commissioner Heriot, you're present?

COMMISSIONER HERIOT: I am present, and I have also brought along Ahron Singer, who's an intern. She's here on the new American civil rights project.
CHAIR LHAMON: Okay, thank you.
Commissioner Kirsanow.

COMMISSIONER KIRSANOW: Here.

CHAIR LHAMON: Thank you. Commissioner Kladney? Commissioner Kladney, if you're speaking, you're on mute. Commissioner Kladney, are you present? We may have lost him. He was on earlier.

COMMISSIONER KLADENY: No, I am here.

CHAIR LHAMON: Thank you.

COMMISSIONER KLADENY: Here.

CHAIR LHAMON: Thank you. Commissioner Narasaki.

COMMISSIONER NARASAKI: Here.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: Here.

CHAIR LHAMON: Thank you. Okay, so, we have a quorum of the Commissioners present. Is the Court Reporter present?

COURT REPORTER: I'm here.

CHAIR LHAMON: Thank you. Is the Staff Director present?

STAFF DIRECTOR MORALES: I am.

CHAIR LHAMON: Thank you. The meeting now comes to order. Is there a motion to approve the agenda for this business meeting?
I. APPROVAL OF AGENDA

VICE CHAIR TIMMONS-GOODSON: So moved.

CHAIR LHAMON: Thank you.

COMMISSIONER NARASAKI: I second, Karen Narasaki.

CHAIR LHAMON: Thank you. Are there any amendments?

COMMISSIONER YAKI: Commissioner Yaki.

CHAIR LHAMON: Go ahead, Commissioner Yaki.

COMMISSIONER YAKI: I'd like to add amendment to, for a motion to modify the time for the statements, etc., for the Stand Your Ground report.

CHAIR LHAMON: Okay, thank you. Is there a second?

COMMISSIONER NARASAKI: I second, sorry.

CHAIR LHAMON: Thank you. Commissioner Narasaki, thank you. As a reminder to the Commissioners, if you speak, with a telephonic meeting, just say who you are so the Court Reporter can record it. If there are no further amendments, let's vote to approve the agenda as amended. All those in favor say aye.

(Chorus of ayes.)

CHAIR LHAMON: Any opposed? Any
abstentions? The motion passes unanimously.

We'll now hear from our Louisiana Advisory Committee Chair, Robert Lancaster, on the Committee's recently-released report titled Barriers to Voting in Louisiana. Mr. Lancaster, you have ten minutes, and welcome.

II. PRESENTATION OF REPORT ON BARRIERS TO VOTING IN LOUISIANA

MR. LANCASTER: Thank you very much, Madam Chair. Thanks to the Commission for inviting me to report on the work that the Louisiana State Advisory Committee did in investigating barriers to voting in Louisiana.

I also want to thank the Commission for their 2018 statutory report. It was quite comprehensive and thorough, and I hope in some small way the work that we did in Louisiana helped contribute to your work on that report.

And I also wanted to thank David Barreras, our DFO [Designated Federal Officer]. He's been consistent and diligent in assisting us. We pulled this together in a very short timeframe. Also Corrine Sanders, another staff with the Commission. We couldn't have done it without their just consistent assistance. They've been phenomenal.
The members of the State Advisory Committee also I want to recognize. We're all volunteers with really demanding time, and they all really pitched in to pull this together. I especially want to thank Andrea Armstrong, Marjorie Esman, and Rob Garda. They took a significant role in drafting this topic. But all members of the Committee who attended our meetings were very much involved.

So the Louisiana Committee, through a majority vote in September of 2017, decided that your work and your statutory report was of significant importance to us as well. And so we sought out to examine barriers to voting in Louisiana that might have some discriminatory impact.

In carrying out this task, we identified important stakeholders, we searched for people with diverse perspectives and direct knowledge of these issues. We identified academics, politicians, advocacy organizations, community organizations, and citizens with varied perspectives.

And since our Committee is really consisting of people primarily in New Orleans and Baton Rouge, it was really important for us to reach out and make sure that we did a statewide investigation and also made our inquiry accessible to
people around the state.

And to that end, we actually conducted two hearings, one in north Louisiana in November 2017 at Grambling State University, and then one December 6, 2017 in Baton Rouge. And we also collected additional testimony during our telephonic meetings.

The Committee identified issues that sort of frequently recurred and testimonies that we received and information we gathered. I'll talk about these issues briefly, each one. But just to list them, polling locations and location selection was an issue. There were issues around early voting, including early voting locations, the periods of time that early voting was allowed, and also the accessibility of early voting locations.

There was also issues around the unavailability of same-day registration in Louisiana. There were some issues around some voter identification requirements. Also issues around provisional ballots in Louisiana. And issues around disenfranchisement of formerly incarcerated and those in pretrial detention.

Our findings and recommendations are detailed in our briefing paper that we approved in June 2018, but I'll summarize some of our key findings
and recommendations for you.

Regarding polling locations, we received testimony from representatives at our Secretary of State's office that indicated that all the Louisiana law requires assignment of polling place to every election precinct. There are only 2068 polling locations for the 3904 precincts that exist. That's about an average of two precincts served by one polling location.

This consolidation is actually permissible under our Louisiana law when the Parish Board of Supervisors, election supervisors, get approval from the Secretary of State's office, they may make these because of budgetary constraints. Also population might cause consolidation of polling locations.

But we also received testimony primarily from a professor at the University of Louisiana, Monroe, where he indicated that since 2012, there's 103 polling places in Louisiana that's been eliminated. And voters who use those polling places now need to travel longer distances. And perhaps, you know, since they're busier, wait in longer lines to vote. So this discourages voting and has a disproportionate impact on poor, disabled, and elderly.
We also heard from an economist whose statistical research shows us that the racial makeup of an area is a predictor of the number of polling locations in that area. The result is fewer polling locations per voter in areas with more black residents.

The community also found that there were some transparency issues and lack of clarity in the decision-making process regarding polling locations or the elimination or consolidation of polling locations when those eliminations or consolidations occurred. We also have some concerns about the makeup of the Parish Board of Election Supervisors.

The makeup's such that members of a particular political party can capture the decision-making process as to polling locations. And that sort of led us to recommendations there needed to be more transparency and accountability in this decision-making process regarding polling locations.

Looking at early voting in Louisiana, the Committee heard a good bit of testimony who had concern about the number of early voting locations available, and also the periods of time allotted for early voting and the accessibility for early voting. As of spring 2018, there were 94 early voting
locations for the 3904 precincts in Louisiana.

And despite this number, there's a shortage of early voting locations in certain areas of the state. For example, Baton Rouge, New Orleans, and Jefferson Parish, the three most populated areas in New Orleans, have four early voting locations. However, other parishes, like Caddo, which is the fourth most populated area, or Lafayette, which is the fourth most populated city, only has one. And those often serve 260,000 residents or more.

Also, testimony revealed that Louisiana doesn't have sufficient early voting locations, and the state failures to procure more early voting locations frustrates the exercise of the right to vote and also undermines the convenience that early voting is supposed to provide. There's also distance that disproportionally impacts elderly, disabled, and poor.

Specific to this, we heard testimony from the League of Women Voters in Lafayette reporting exceptionally long lines for the one polling, early voting location that's available in Lafayette. Also we heard testimony, currently Louisiana early voting ends seven days prior to an election, and it doesn't include Sundays or legal holidays. Early voting locations are closed on Sundays.
Testimony we heard suggested a broad community support for Sundays, given that many people are off work, it's easier for them to get to those polling locations on Sundays. Also, it's a longer voting periods in general, and up to Election Day even.

As to the accessibility of early voting locations, we heard testimony indicating several barriers for those with disabilities, and also concerns were raised about some of the locations might not be compliant with the ADA [Americans with Disabilities Act] or HAVA [Help America Vote Act].

Registration issues, we identified a number of concerns relating to registration issues. Louisiana currently, our registration procedure is that 30 days prior to election, if you do it by mail or in person. If you do it online, it's 20 days prior to an election. We heard testimony that this really didn't allow for, well, our law doesn't allow for same-day voter registration with provisional balloting that other states allow.

And we heard testimony from several people suggesting that the long registration requirements discourage the franchise. And there's actually the technology available for same-day registration, and
that would increase citizen participation in the electoral process.

Other voter registration issues the Committee heard testimony about includes citizens are not being given registration information when applying for public benefits as required by the National Voter Registration Act.

Also, people released from incarceration weren't getting sufficient information about the law regarding their right to vote while providing information if they were eligible to vote upon release. I'll actually get to other issues relating to felony disenfranchisement in a moment.

Also we heard testimony from some senior advocates for the elderly, who commented that the mail-in form has very, very small print. Also, online voter registration is difficult for a lot of our older citizens to access.

So it's a lot of testimony we heard was relating to voter identification. Louisiana passed last session, made changes in the law for the better, so that now all post-secondary, at least state post-secondary educational institutions are required to issue student IDs that meet the voter identification requirements, so it makes it easier for college
students to vote.

And also, in Louisiana we do allow for provisional ballot procedures if someone shows up to the polls without a proper ID and fills in and signs an affidavit provided by the poll worker. However, some of the testimony revealed instances where people were turned away from voting and never offered an affidavit.

Also, the information that's on the Voter Bill of Rights is actually posted on, at all polling locations is, it's a seven-page sort of poster document. And this is located kind of midway through the --

CHAIR LHAMON: Thank you.

MR. LANCASTER: So provisional ballots are, we --

CHAIR LHAMON: Chair Lancaster, this is Catherine Lhamon. I want to thank you. We're just a little bit past the ten minutes for the presentation, and I do want to make time for Commissioner questions on your -- you started you presentation, you said that you hoped that the report would be useful to the Commission in the report that the Commission issued in September on voting rights.

And I want to assure you that it was and
is, and I very much appreciate the comprehensive and very thorough reports from your Committee. And I hope you'll communicate that gratitude to the other members of the Committee as well, and I'll take a moment now just to open for questions from my fellow Commissioners. Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you, Madam Chair. I also want to thank you for your very thoughtful report and recommendations. I think your report highlights the fact that there are a lot of administrative ways that can either make it easier or harder for people to vote, and I appreciate that you really went to into that very thoroughly.

I was curious as to how interested the Secretary of State is in implementing some of your recommendations, whether you've gotten any feedback from them or from the local election officials.

MR. LANCASTER: Thank you for that question, and I'm glad to hear that our report was useful. Actually, I don't know, we're actually currently in the midst of an election for our Secretary of State. The Secretary of State who was in office at the time we conducted our hearings resigned amid a scandal, and the Deputy, who is actually running for Secretary of State now, did testify at our
hearing. He was quite helpful.

They did issue some responses. After the conclusion of our collection of testimony, we provided transcripts of that testimony to the Secretary of State's office. And they did give us some helpful response. Some of the response didn't necessarily indicate a lot of change.

The biggest concern for our Secretary of State's office I think is primarily budget, and that a lot of our recommendations would create the need for more resources to implement. And some of our recommendations, for instance relating to felony disenfranchisement were created, you know, with legislative action.

As far as the administrative changes, we didn't get a real sense that those were forthcoming, primarily because of budget constraints and some other constraints relating to the recruitment and training of poll workers.

The Secretary of State's office did respond that it's very difficult to recruit and sort of maintain a selection of, a collection of trained poll workers around the state, that that's a barrier, and I imagine it is, since they're all volunteers pretty much. Hard to maintain.
COMMISSIONER NARASAKI: Since we have an election coming up, I'm wondering if you saw any action in terms of trying to find sites that weren't more, better accessible to people with disabilities? Because that was a consistent thing we've heard from all of the facts, that no one is doing a very good job in making sure that people with disabilities are really able to fully exercise their right to vote.

MR. LANCASTER: Right, and I don't, I can't speak to what progress has been made to that regard in Louisiana. The Committee, our State Advisory Committee, I hope will meet again in November to discuss sort of further action on this, given that we do have an upcoming election and perhaps gather a little bit more information if any progress has been made.

COMMISSIONER NARASAKI: Great. And then my final question is: is there any action that you would like us as a Commission to take with your report.

MR. LANCASTER: I think a lot of the best action I think is to just get information out relating to these barriers that do exist so that people are aware. I often think that if people sometimes experience these issues with, for instance, accessing
early voting, but don't necessarily sort of think through the ability to get these procedures changed.

So the more press, the more information that can be disseminated just to bring these issues to the forefront, I think are helpful.

COMMISSIONER NARASAKI: Great, thank you.

CHAIR LHAMON: Other questions from other Commissioners? Hearing none, I want to add a second to Commissioner Narasaki's thanks for the vivid detail that this Committee's report includes and the way that it illustrates some of the voting harms that your investigation uncovered.

That, the image that you include of voters with disabilities lining halls with wheelchairs and canes waiting for an ability to access a polling location I think will stick with me for quite some time.

And the clarity that you offered and the statistical analysis of data in Louisiana showing that racial makeup of an area is a predictor of the number of polling locations in that area I also think is an extraordinary and clear explanation of what that harm can be.

And I also very much appreciated the religious freedom recommendation and incorporation in
your analysis of the issue about early voting on Sundays and recommendation that there may be employees who would appreciate a day of worship on Fridays and Saturdays as well. And that an argument for not allowing early voting on Sundays ignores the reality of many faiths that voters may adhere to.

So again, thank you very much for the comprehensive report. Also, for taking the time to present today. We really appreciate the opportunity to have heard from you and to have read the benefit of the expertise from your Committee.

I'm going to turn now to the Chair of our New Mexico Advisory Committee, Dr. Sandra Rodriguez. We had the pleasure of seeing Dr. Rodriguez here in DC last month, and we're glad to hear from her on the Committee's recently released report titled Elder Abuse in New Mexico.

Dr. Rodriguez is welcome. You are presenting for ten minutes, and then we'll open for questions.

III. PRESENTATION OF REPORT ON ELDER ABUSE IN NEW MEXICO

MS. RODRIGUEZ: Thank you. And thank you again for the opportunity to be here with you today. I'd like to start off by thanking everyone that worked
on the New Mexico side on this project. It's been a long-term project that we've been working on that originally started in January of 2011, when we began conversation on issues surrounding elderly abuse.

I'm just going to take a minute to read out names because it's important to give credence for the work that's been done.

Dr. Janet Page-Reeves, Dr. Roger Michener, George L. Bach, Dr. Robert Martinez, Hwasoon Thorson, Elaine Miller, Kenneth Brown, Valerie Jaramillo Webb, Damon Tobias, Charles Vigil, Frances Williams, and Monica Youngblood.

And also, we wouldn't be here today if it would not have been for the tremendous support we have received from Mr. David Mussatt and also the [Staff] Director, Mr. Morales.

I'd like to go ahead and begin, as I mentioned earlier, we started the conversations here in New Mexico as early as January 2011, in which we began conversations looking at issues that had to do with elder abuse reporting. At that time, we found that there were over 254,000 reports that were given nationally. In New Mexico, there were 10,000 reports that were given, that were reported annually.

When we look at New Mexico as a state, we
are a very culturally and ethnically diverse state. Approximately 17% of our population is over the age of 65. Seventeen percent in numbers is 350,000 individuals that are over 60. We have this past couple of years over 11,500 reported new cases that were made to the Adult Protective Services.

Out of those cases, 64% of them are self-neglect, 13% are neglect identified from other individuals, such as caregivers. Twelve percent of the reports have to do with financial exploitation, and ten percent have to do with other types of abuse, such as sexual abuse.

We do know that more women suffer from abuse than men. While these numbers seem high, especially in a state as small as we are, it is reported that it is 24 times as high as those that are actually reported. And this has to do with issues surrounding under-reporting.

Of those, another extenuating circumstance that we have in New Mexico is that of the individuals of the elderly that are here, 15% of them are at the poverty level or below the poverty level, which exasperates a lot of the issues. What we found in our investigation is that elderly abuse is very much a civil rights issue in that individuals are
specifically and purposely targeted for abuse of one type or another.

So this population of individuals are extremely at risk for some type of abuse. In our original project proposal, which we put together after many years, we started in 2011, we finally came together and we put together a proposal in 2016. At this time, we found that nationwide, as many as one in ten elderly have been identified as suffering some type of abuse.

We also found, from there we moved off, once our proposal was accepted, we held a briefing in June 24 of 2016. During this time we held, we had five different panels with individuals from the state that came from, we had individuals from the congressional offices, we had the president and CEO from the Hispano Chamber. We had individuals from nonprofits, such as attorneys from the Senior Citizens Law Office, from the Aging Family Center.

We had individuals that were working as legal guardians. We had private citizens, we had doctors, nurses. We had individuals from the state agencies, such as the Deputy Secretary for the Aging and Long-term Service Department. We had someone from the Adult Protective Services. And we had individuals
from the city of Albuquerque, from the Senior Affairs
for the city of Albuquerque.

The information we received was quite
diverse, and it was mind-boggling. I can tell you
that after that hearing, came back, as we reconvened,
there was a brand new appreciation for the topic that
we had selected. What we found during our initial
analysis of the report, that there were three things
that emerged from the testimony.

It had to do with financial exploitation,
lack of services, and lack of enforcement. But as we
began to look further into these and do further
research, by the end of the year, in November of 2016,
there was an investigator's report that was put out by
Diane Dimond, who published a five-part series that
had to do on guardianship issues.

What was found is that the process was
dominated by a group of court-appointed for-profit
professionals, and oftentimes they were accused of
isolating family members and mismanaging the elder's
estate.

Six months later, there was another
investigative report, and by the Albuquerque Journal.
In this there were, it was called Who's Guarding the
Guardians. In this report, it actually led to an
arrest and closure of a conservator management company, which again, they were from court-appointed individuals who were there to represent the elderly.

In my final report, as we started to put the research that we did after the testimony, we found that there were five dynamics that were apparent. One is that widespread impact of poverty and lack of affordable services to elders and their caregivers was one of the dynamics.

Under-reporting of abuse was a second. Three, the structural weaknesses in the healthcare system allow for abuse to go undetected. The fourth one, lack of enforcement of the existing laws and regulations that are there to protect the elders. And the fifth one was a variety of forms of financial exploitation which lead to individuals to prey on the elders.

These five dynamics -- what we then did is we moved into the recommendations. I'm just going to go ahead and read what they are, there are several recommendations. But I'm going to point out, though, just quickly, that the lack of, of under-reporting has to do so much with the elder's age, or you know, that if it's a family member, they don't want to, an elder will do whatever they can to protect the family.
They will react as parents, no matter how old they are. And their children are still their children. So the under-reporting is one of the main issues, in my opinion, that needs to be overcome.

And that can only take place by making this report a mainstream of you know, the information, just to put it out there so those conversations can begin to take place. Truthful conversations, so that the stigma that comes from elder abuse can start to be broken down. That is the biggest problem, in my opinion.

Recommendations, that we have to have more attention that -- yes.

CHAIR LHAMON: Thank you so much, we're just at ten minutes and we do have the benefit of having the written recommendations in the report.

MS. RODRIGUEZ: Thank you.

CHAIR LHAMON: Open for questions from my fellow Commissioners. I very much appreciate your attention to this issue and your presentation today.

Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you, Madam Chair, and thank you, Dr. Rodriguez. As I get older, I get more concerned about this particular issue. I'm wondering, it sounds like you did a wonderful job in
really having a breadth of experts testifying.

Did you identify any disparities among different communities? For example, for the immigrant elderly who may not speak English, or for, you have a very extensive Native American population. So I'm just wondering if that was anything that you examined.

MS. RODRIGUEZ: We did, in that we did, as I mentioned earlier that some of the disparities that happen are based on cultural differences that for some groups who are very much family-oriented and will do whatever it takes to protect your family.

There's others now that as things start to change, there are young individuals that are having their families and taking care of their families that elders are put in different facilities because of the lack of the ability to help take care of. So there is a lot to be said for those cultural and tradition differences that exist between our communities.

COMMISSIONER NARASAKI: Does the state do a very good job in terms of providing bilingual access for reporting? For example, in, I believe you have an extensive Spanish-speaking population, and you spoke of having someone from the Asian-American community.

I'm wondering how well the state does in making sure that those who are limited English
proficient actually know that there are laws that protect them and know how to report.

MS. RODRIGUEZ: We did not find that there's a lot of support in that area. No, the answer's no. They did not do a great job in getting information out.

COMMISSIONER NARASAKI: Great, thank you, because that's something actually under the federal law, there's a lot of strong federal guidance. So that's very interesting to hear. And then my last question is just is there anything that you would like our Commission to do in particular with your report?

MS. RODRIGUEZ: You know what, getting the information out, that is the, that is huge, is that if we do not make it more, the information more accessible out there, you know, we talked a lot afterwards in our Committee, how do we get this information. And you know, do we disseminate it to community centers, how do we get it to the people that need it.

That is problematic, that is problematic.

So we need to find avenues to educate not only the elders themselves, but the families that there is, there are services, and how to access those services.

COMMISSIONER NARASAKI: Great, thank you,
Dr. Rodriguez, thank you.

MS. RODRIGUEZ: Thank you.

CHAIR LHAMON: Questions from other Commissioners? Dr. Rodriguez, I was surprised, I'm going to let this slide, but I was surprised to see in the federal legislation description no mention of the Age Discrimination Act of 1975. The Commission is very proud of securing passage and laying the groundwork for it, but I did see its points animating your analysis, so I'm just going to ignore that as oversight.

But I did see at page 21 of your report a mention that stakeholders believe the lack of funding for agencies responsible for enforcing laws and regulations that pertain to elder rights is a key fact in the reported lack of response in enforcement. And I wondered if you could amplify what kinds of concerns you all heard about the funding entitlements for Agency enforcement of elders' civil rights.

MS. RODRIGUEZ: I'm sorry, I'm having trouble, you kept coming in and out on my phone for some reason. If I understood the question correctly it is on funding. So you're asking about the impact of funding or lack of funding.

CHAIR LHAMON: Yes, I was, thank you.
MS. RODRIGUEZ: Is that correct?

CHAIR LHAMON: That's correct.

MS. RODRIGUEZ: Okay, you know that a good example's going to be that Congressman Lujan Grisham just passed the Care Corps Act, got funding for it this past year. When we were doing our report, at that time they reported that they were trying to get it passed and get funding. So it was an unfunded initiative. And here, two years later, it finally received funding.

So what that outlines is that if these issues aren't put out on the forefront, and we are aware of how dire circumstance is, some of the most vulnerable population that we have. Where they're at, that if we don't make it public and we don't start having real, honest conversations about it, there is not going to be any funding. It's not a priority. So I hope that answers your question.

CHAIR LHAMON: It does. Thank you so much, Dr. Rodriguez, and thank you for taking your time to present on this report for us. I hope you will communicate our gratitude to your fellow Committee members as well.

And with that, we'll move to the next item on our agenda, which is a presentation from Colorado
Advisory Committee member David Kopel on the Committee's recently released report, titled The Colorado Constitution's No Aid to Sectarian Institutions Clause and Its Impact on Civil Rights.

IV. PRESENTATION OF REPORT

THE COLORADO CONSTITUTION'S NO AID TO SECTARIAN INSTITUTIONS CLAUSE AND ITS IMPACT ON CIVIL RIGHTS

CHAIR LHAMON: Mr. Kopel, we'd appreciate a presentation for ten minutes, and then open for questions. Mr. Kopel, if you're on the phone, you're on mute.

MR. KOPEL: I'm sorry, is that better now?

CHAIR LHAMON: Yes, now we can hear you.

MR. KOPEL: All right, great, that's, phones are complicated these days. We chose this project because of great public interest in the topic.

One of the state's largest school districts, the Douglas County School District, had adopted a small voucher program, which was open to independent schools, including religious ones.

Eventually, the Colorado Supreme Court struck down the program. And the Court split three to three on the issue of the Colorado constitution's No Sectarian Aid for Education Clause. The citing, though, in that case came from the justice on a
separate issue, who held that the program violated a portion of Colorado's School Finance Act.

We also knew that there's a nationwide interest in the issue of state prohibitions on aid to religious schools. Soon after we began the project, the US Supreme Court ruled in the Trinity Lutheran case that the Missouri state government's application of a similar clause in the Missouri constitution violated the First Amendment.

At the same time, the U.S. Supreme Court overturned the Colorado Supreme Court decision and sent that case back for further consideration. We held a very successful public hearing in July 2017. There were presentations from five experts who had diverse points of view. There was also extensive public testimony, and that too was very diverse.

After the fall in the hearing, we continued to receive further public input. This included letters from the public and follow-up analysis from some of the experts. An initial draft of our report was made public in December 2017, and in the following month we received helpful comments and constructive criticism from the public and from some of the experts.

We incorporated those ideas into a revised
report, which was again made available for public
comment in March. And of course, throughout the
process, Committee members provided good suggestions
for improvement.

As the report demonstrates, we took all
perspectives into account, and reported the synthesis
of the different perspectives from the experts in the
public. We also conducted additional historical and
research. And then in April, we adopted the report by
a seven-to-one vote. The dissenting member did not
offer a reason for the No vote.

The Commission staff's review to the
submitted report was rigorous and helped make the
report more precise in its phrasing and encouraged us
to provide more complete citations for various
historical facts and legal items. Our response to the
staff edits didn't change any of the report's
conclusions, although it did improve the phrasing of
some of them.

And then in our meeting this August, we
adopted the report as revised and as recently
published by the Commission.

As the report details, in Colorado, the No
Sectarian Aid Clause has always been a source of
religious discrimination. This isn't to say that the
clause was entirely the result of bad motives.

   While some advocates of the clause past and present have been motivated by very good principles, and these include protecting religious schools from the government or interference that often accompanies government funding, preventing conflicts between different religious groups about funding, and attempting to keep the government neutral and uninvolved in religious matters.

   Unfortunately, the text and history of Colorado's No Sectarian Aid Clause have not led to neutrality. As of 1876, when our Colorado constitution was adopted, the dictionary definition of sectarian did not mean religious. Instead, sectarian was an epithet against disfavored minority religions. It could be a synonym for fanatical or heretical.

   In the Colorado context, it was also a code word for Catholic, and reflected hostility towards the Catholic population, particularly the Hispanic population of Southern Colorado, which had once been part of the New Mexico territory.

   For much of Colorado's history, some public schools, such as those in Denver, did conduct religious education in a manner that was consistent with disrespect for non-Protestant religious
minorities. In particular, this included daily readings from the King James Bible. That's a bible translation which is acceptable to all Protestants, but not to Catholics.

And of course, the King James Bible doesn't accord with the religious perspectives of Jewish people or some of Colorado's small but growing population of immigrants from China and Japan.

Starting in the 1970s, the legislature created and expanded higher education scholarship programs that could be used at non-government schools. Again, the No Sectarian Aid Clause became a basis for religious discrimination. State government officials decided which types of religious schools were politically correct and which were not.

For example, Regis University is a liberal Catholic school, and Naropa University is liberal Buddhist school. Both of these were not sectarian, in the views of Colorado government officials, but Colorado Christian University is a conservative, non-denominational school, and according to state officials, it was sectarian. And so its students could not receive scholarships.

While this discrimination was upheld by the Colorado Supreme Court, it was eventually
overturned by the Tenth Circuit in 2008. The state legislature then revised the higher education scholarship statutes to bring them in line with modern First Amendment laws against government discrimination among religions.

Today, Colorado has many different scholarship programs from kindergarten through graduate school in which religious schools may participate without discrimination. And except for the unusual litigation involving Douglas County, none of these programs have been accused of violating the No Sectarian Aid Clause.

The Advisory Committee's report does not make any conclusions about whether scholarship voucher programs at any level of education are or are not a good idea. Many public commenters wanted us to decide this issue, but this kind of decision is beyond our Committee's expertise.

As we recognize, and this was something that was shared across the ideological spectrum of our experts, there is a serious problem for some students, including minorities and people of disadvantaged socioeconomic background, being trapped in low quality public schools.

But the Committee felt that how to solve
that problem was beyond our expertise and should be
addressed by school boards and the legislature based
on their own evaluations of the conflicting social
science evidence.

Our conclusions in the report summarize
the history of discrimination in the application of
the No Sectarian Aid Clause, but we did not recommend
that the clause be repealed, nor did we declare that
the clause itself is a violation of the First
Amendment. A repeal decision will be up to the people
of Colorado and not a federal committee, and the First
Amendment is up to the U.S. Supreme Court.

So our report is not a call to action.
Rather, it is to provide public education about
historical and recent religious discrimination in
Colorado. Thank you.

CHAIR LHAMON: Thank you so much for the
presentation. I’ll open for questions from my fellow
Commissioners.

Mr. Kopel, but in your findings, you all,
your committee took the, I think, unusual step of
clarifying what the Committee does not make finding
about in, I think, three instances. And I appreciated
that clarity as you were drawing distinctions in the
report and the detailed coverage of the topic in the
MR. KOPEL: Thank you. It was, we had to resist quite mightily efforts from those people who thought that we were the people who were going to decide whether vouchers were a good idea or not. And obviously there's a lot of social science evidence on that, lots of conflict on that.

And we are not education experts, we're concerned citizens about civil rights and trying to stick to our knitting and not exceed our jurisdiction or our knowledge.

CHAIR LHAMON: Or leave time for another report.

MR. KOPEL: Yes.

CHAIR LHAMON: Any other questions from other Commissioners? Mr. Kopel, thank you so much for the presentation. I hope you will thank your fellow Committee members for their work and for their service and yours on the Colorado State Advisory Committee. And thank you for taking the time to speak with us today.

MR. KOPEL: Thank you.

CHAIR LHAMON: Sure. We'll now move to our amended item on the agenda, a motion from Commissioner Yaki on the statement timelines for Stand
V. MOTION FROM COMMISSIONER YAKI TO AMEND

STAND YOUR GROUND TIMELINE

CHAIR LHAMON: Commissioner Yaki, you want to make your motion?

COMMISSIONER YAKI: Yeah. Just a second.

I'd like to make a motion to extend the timelines on the Stand Your Ground report, with the statements due on Friday, November 30; rebuttals due Wednesday, January 9; notice of surrebuttal due on January 16, 2019; and finally surrebuttal text due on Wednesday, January 23.

This is due in part to try and alleviate the writing stress on a number of us, as we have all these other reports due at the same time.

CHAIR LHAMON: Thank you. Is there a second?

COMMISSIONER NARASAKI: I'll second, Commissioner Narasaki.

CHAIR LHAMON: Thank you. Is there any discussion? As we open the floor up for discussion, I'll note that Commissioner Heriot unfortunately had to leave to take a train unexpectedly. But I understand from earlier conversations that Commissioner Heriot does not object to this motion to
extend the deadline. Any other discussion on this motion?

    If not, I'll call the question and take a roll call vote. Commissioner Kirsanow, how do you vote?

    COMMISSIONER KIRSANOW: Yes.

    CHAIR LHAMON: Commissioner Kladney, how do you vote?

    COMMISSIONER KЛАDNEY: Yes.

    CHAIR LHAMON: Commissioner Narasaki?

    COMMISSIONER NARASAKI: Yes.

    CHAIR LHAMON: Commissioner Yaki?

    COMMISSIONER YАКI: Aye.

    CHAIR LHAMON: Vice Chair Timmons-Goodson?

    VICE CHAIR TIMMONS-GOODSON: Yes.

    CHAIR LHAMON: And I vote yes. The motion passes unanimously. Next, we'll hear from Staff Director Mauro Morales for the monthly Staff Director's report.

    VI. MONTHLY STAFF DIRECTOR'S REPORT

    STAFF DIRECTOR MORALES: Thank you, Madam Chair. I have nothing more to add to what's already contained in the report, so I won't go into any specific details. I just want to thank the staff publicly for all the outstanding work they did on
getting the statutory enforcement report out and the other reports.

We're, you know, General Counsel's office and the our Office of Civil Rights Enforcement, as well as our administrative services offices and the entire Commission staff have been doing outstanding work, and I really appreciate that, so I want to acknowledge all that.

As always, I'm available to discuss any specific matter with any Commissioner or Commissioners if something comes to their attention. With that, I conclude. Thank you, Madam Chair.

CHAIR LHAMON: Thank you so much. If there's nothing further, I -- oh, Commissioner Narasaki.

COMMISSIONER NARASAKI: So I wanted to thank the Staff Director and David Mussatt for the report that we got on the regional program monthly report, although when I print it out, it's really tiny. So, but the information was very, very useful, and I want to commend all of the amazing work that I know staff are doing.

I recognize that we're still understaffed, and the good news is that we got all of the Committees appointed and the challenges trying to make sure that
they all have the staff support they need. So just wanted to note my appreciation, and look forward to the SAC reports that will be coming up. Thank you.

CHAIR LHAMON: If there's nothing further, I'll adjourn the meeting at 10:51 a.m. Eastern Daylight Time. Thank you all.

(Whereupon, the above-entitled matter went off the record at 10:51 a.m.)