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U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC BUSINESS MEETING

+ + + + + UNEDITED/UNOFFICIAL

WEDNESDAY, OCTOBER 3, 2018

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The Commission convened via teleconference at 12:00 p.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 KLANDEN, Commissioner*

KAREN K. NARASAKI, Commissioner*

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director*

MAUREEN RUDOLPH, General Counsel*

*Present via telephone
STAFF PRESENT:
LASHONDRA BRENSON*
KATHERINE CULLITION-GONZALEZ*
PAMELA DUNSTON* Chief ASCD
ALFREDA GREENE*
TINALOUISE MARTIN* OM
MICHELE RAMEY*
SARALE SEWELL*
BRIAN WALCH*
MARIK XAVIER-BRIER*

COMMISSIONER ASSISTANTS PRESENT:
SHERYL COZART*
JASON LEGRIA*
CARISSA MULDER*
AMY ROYCE*
RUKKU SINGLA*
ALISON SOMIN*
IRENA VIDULOVIC*

ALSO PRESENT:
JULIE BUSH
KAREN FUNK
MORIAH O'BRIEN

*Present via telephone
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(12:00 p.m.)

CHAIR LHAMON: This meeting of the U.S. Commission on Civil Rights comes to order at 12:00 p.m. Eastern Time on October 3rd, 2018. The meeting takes place over the phone. I'm Chair Catherine Lhamon.

I'd like to confirm that each of the Commissioners is on the line. I'll take a roll call here at the outset. Please say, "present," when I say your name. Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Present.

CHAIR LHAMON: Thank you. Commissioner Adegbile?

COMMISSIONER ADEGBILE: Present.

CHAIR LHAMON: Thank you. Commissioner Heriot?

COMMISSIONER HERIOT: I'm here.

CHAIR LHAMON: Thank you. Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIR LHAMON: Thank you. Commissioner Kladney?

COMMISSIONER KLADNEY: Here.

CHAIR LHAMON: Thank you. Commissioner
Narasaki?

COMMISSIONER NARASAKI: Here.

CHAIR LHAMON: Thank you. Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Thank you. Based on that, a quorum of the commissioners is present. Is the court reporter present?

COURT REPORTER: I'm present.

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

STAFF DIRECTOR MORALES: I am present.

CHAIR LHAMON: Thank you. The meeting shall now come to order. Is there a motion to approve the agenda for this business meeting?

I. APPROVAL OF AGENDA

COMMISSIONER KIRSANOW: So moved.

CHAIR LHAMON: Thank you. Is there a second?

COMMISSIONER Kladney: Kladney here. I'll second.

CHAIR LHAMON: Thank you. And Commissioner Kladney, I appreciate the reminder. Because this is a telephonic meeting, if folks could say their name before speaking for the court reporter
that would help.

Are there any amendments to the agenda for today's meeting?

COMMISSIONER NARASAKI: Yes, Madam Chair. This is Commissioner Narasaki. I move to amend the agenda to add a discussion regarding shortening the surrebuttal period in connection with the Broken Promises report.

CHAIR LHAMON: Thank you. Is there a second to that motion?

COMMISSIONER YAKI: Commissioner Yaki and I second.

COMMISSIONER ADEGBILE: Commissioner Adegbile. Second.

CHAIR LHAMON: Thank you. 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?

COMMISSIONER HERIOT: I'm opposed.

CHAIR LHAMON: That was Commissioner Heriot?

COMMISSIONER HERIOT: Yep.

CHAIR LHAMON: Thanks. Any abstentions?

The motion passes. One Commissioner opposed. No
Commissioners abstained. All others were in favor.

The first item on the agenda is a discussion and vote on the Commission's report titled "Broken Promises: Continuing Federal Funding Shortfalls for Native Americans."

II. PROGRAM PLANNING

DISCUSSION AND VOTE ON COMMISSION REPORT

CHAIR LHAMON: We'll have two votes. First, we will consider the report. And second, we will consider the findings and recommendations. I'll open the floor for discussion. Is there a motion?

COMMISSIONER NARASAKI: Yes, this is Commissioner Narasaki. I move for the Commissioners to adopt the report circulated by my special assistant, Jason Lagria, yesterday morning, Tuesday, October 2nd.

CHAIR LHAMON: Thank you. Is there a second?

VICE CHAIR TIMMONS-GOODSON: Timmons-Goodson. I second.

CHAIR LHAMON: I'll offer a few points to begin our discussion. First, I thank Commissioner Narasaki for her leadership with this project, particularly after we received a bipartisan request from Congress to update the Commissioner's crisis
report from 2003, and her staff, particularly Katherine Culliton-Gonzalez, Maureen Rudolph, Sarale Sewell, and Elizabeth Paukstis, as well as all the other members of our staff who pitched in during the development of this project, including the lengthy drafting and research process. Thanks to all for their efforts.

We today consider a report that covers the spectrum of federal funding obligations to Native American communities and the scope of need remaining for the federal government to fulfill those obligations.

As is written in the executive summary of the text we consider today, our nation has broken its promises to Native Americans for too long. The United States government must rededicate itself to working with tribal governments to tackle the crisis in Indian country, including living up to treaty obligations, just as the United States expects all nations to live up to their own.

The federal government should provide steady, equitable, and nondiscretionary funding directly to tribal nations to support the public safety, healthcare, education, housing, and economic development of Native tribes and people.
I'll open the floor now for discussion, beginning with Commissioner Narasaki as the sponsor of this project.

COMMISSIONER NARASAKI: Thank you, Madam Chair. I would also like to add my heartfelt appreciation to the entire Commission team for everyone's efforts in preparing this report. I'd especially like to thank our Office of Civil Rights Evaluation team including Kathy Culliton-Gonzales, Sarale Sewell, and all of their staff and interns who pitched in to finish this report.

I'd also like to offer particular thanks to the Office of the General Counsel and Maureen Rudolph for her help and guidance and particular expertise through this entire process. And, of course, the Office of the Staff Director for helping to oversee this report, the Office of Management and its respective divisions for helping to manage our briefings and our many travels to Indian country, and our Regional Programs Coordination unit and respective SACs [state Advisory Committees] who have or will soon be releasing reports on Native issues, including Alaska, Montana, and South Dakota.

I'd also like to thank my fellow Commissioners, our special assistants, especially my
special assistant, Jason Lagria, and law clerks who
helped review and provide feedback on a pretty massive
report and the findings and recommendations.

I'd like to particularly recognize
Representative Derek Kilmer for his support of the
Commission and for inviting me and then-Chairman
Castro and our General Counsel to the Quinault
Reservation to meet with tribes from across the
Pacific Northwest.

And, finally, I'd like to extend my thanks
to the South Dakota SAC, our staff, and the Oglala
Sioux Tribe for welcoming me when I visited the Pine
Ridge Reservation this summer. I took many things
from that hearing and it particularly helped to make
our section on economic development more robust.

Today's report has been a very long time
in coming. Since the current Commission does not have
a Native American commissioner, I have made it a
priority during my term to reach out to American
Indians, Alaska Natives, Native Hawaiian and Pacific
Islanders to ensure that the significant civil rights
issues facing these indigenous peoples continue to be
tackled.

When I did outreach during my first term
on the Commission, Native American leaders told me how
extremely important and useful the Commission's 2003 report, “Quiet Crisis: Federal Funding and Unmet Needs in Indian Country,” had been in their work, and that the report needed to be updated.

That's why the first item I proposed as a Commissioner in 2014 was for us to update this report. And as the Chair mentioned, a bipartisan group of members of Congress added their urging as well.

A review of our 2003 and 2018 reports should be a sobering wake-up call to the conscience of all Americans. The U.S. government's historic and ongoing failure to sufficiently provide and fund Native American programs that meet their interconnected needs, such as infrastructure, self-governance, housing, education, health, and economic development, violates our nation's trust responsibilities and fails to provide Native Americans with an equal opportunity to raise their living conditions to the standards enjoyed by others.

While the focus of the report is on the trust relationship and the many unmet needs and hardships faced by Native Americans, it's been my personal experience that the Native American communities are rich in so many ways.

As the first peoples of our nation, their
contributions to our country are invaluable. They have joined with fellow Americans to build this country and to defend it in time of war. They have shared their vibrant cultures, arts, and traditions, and their values, such as deep respect for family and elders, shared responsibility to care for the land and community, and commitment to future generations, strengthens America.

Their history is one of resilience and enduring centuries of discrimination, injustice, and broken promises that continue to this day. Yet the lack of accurate historic and modern depictions and full inclusion of Native Americans in the media and our schools have rendered their stories often untold and unappreciated by other Americans.

Indeed, a recent study found that 40 percent of those Americans surveyed did not even think that Native people still existed in the United States. This is why it's so important that the Commission continue to be a voice to highlight the critical issues faced by American Indians, Alaska Natives, and Native Hawaiians. Thank you.

CHAIR LHAMON: Thank you, Commissioner Narasaki. Are there any other discussion or amendments?
Hearing none, I'll call the question and take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I vote no.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLASDNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes. Two Commissioners opposed. No Commissioners abstained. All others were in favor.

Next we will consider the findings and recommendations from the report. I open the floor for discussion. Is there a motion?

COMMISSIONER NARASAKI: Yes, Madam Chair, this is Commissioner Narasaki. I move for the Commission to adopt the findings and recommendations
circulated by my special assistant, Jason Lagria, yesterday morning, Tuesday, October 2nd.

CHAIR LHAMON: Is there a second?

VICE CHAIR TIMMONS-GOODSON: Timmons-Goodson. I second.

CHAIR LHAMON: Any discussion?

COMMISSIONER HERIOT: Madam Chair?

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: Yes, I'd like to voice my objection to the procedure that we've been following here. You know, this telephonic meeting has been utterly unnecessary. We will have a live meeting next week. If we had adopted all of this at that live meeting, we would indeed have made it by the end of the year and have this report put out. But, instead, we have to hold it as a telephonic meeting, and we had to hold it during a period where I was unable to adequately prepare because I had been ordered by the Staff Director not to work anymore until the end of the fiscal year, which was Sunday.

And so I object to this. I don't think we should be considering the findings and recommendations until our regular meeting. And at that point, we would trigger our usual procedure for Commissioner statements, rebuttals, and surrebuttals, if necessary.
And, of course, usually they are not necessary.

That would still have gotten us to the end of the calendar year, which, for some reason, somebody must have promised somebody on Capitol Hill that we would do. However, it is also true that, at the same time we are doing this report, we are working on our rebuttals, our statements on two other reports. So we're going to be doing three at a time.

At the time that you were confirmed as Chair, one thing that Commissioner Kirsanow and I were extremely interested in was making sure that you would continue our practice of statements, rebuttals, and surrebuttals according to our usual rules.

But, instead, you know, I find that we're being crushed and always being asked to do it more quickly than our rules actually provide for. And I think it's utterly unnecessary in this case.

I have been happy to cooperate in those situations; for example, where our annual enforcement report just had to get done, and therefore curtailing the number of days available I think is the right thing. I've been willing to curtail the number of days available on several occasions now. But, when are we going to have an ordinary report where we don't try to stuff it down my throat?
COMMISSIONER NARASAKI: So, Madam Chair, this is Commissioner Narasaki. I would like to respond to that.

CHAIR LHAMON: Okay. Go ahead, Commissioner Narasaki.

COMMISSIONER NARASAKI: I think we could discuss the timing when we get to my motion. I would like to point out to Commissioner Heriot that, in our appropriations, the completion of this report was in fact specifically called out. And also, with your timing in terms of actually working the numbers, you will find that it would require our staff to work through the Christmas holidays, which I do not --

COMMISSIONER HERIOT: Oh, heavens. Oh, heavens.

COMMISSIONER NARASAKI: So, if I could get to the findings and recommendations, I am very proud of the report, the substantive nature, the hard work of our staff in digging up all of the numbers that so clearly makes the case that in fact Congress has not lived up to its obligations to sufficiently fund. And I feel that our recommendations are strong and reasonable, and something that Congress can tackle.

II. PROGRAM PLANNING

DISCUSSION AND VOTE ON COMMISSION
FINDINGS AND RECOMMENDATIONS

COMMISSIONER NARASAKI: Tragically, Native Americans continue to rank near or at the bottom of most social, health, and economic indicators. Too many Native Americans face a gauntlet of challenges that spans their entire lives, from increased infant mortality rates, shorter life expectancies, higher rates of poverty, lower completion of college, unemployment, being victims of crime, including rape, to alcoholism, diabetes, and suicide.

Moreover, our nation’s failure to provide for the well-being of Native Americans and promote their self-determination and self-sufficiency have left many reservations without adequate access to clean water, plumbing, electricity, internet, cellular service, roads, public transportation, housing, hospitals, and well-maintained schools, things that other Americans take for granted.

Our review has found that, even when federal funding for Native American programs has increased, these levels have not kept pace with declines in real spending power, let alone meet our trust obligations.

Moreover, funding for Native American programs is often discretionary, and Congress often
provides funding for Native American programs in a manner that makes long-term planning and budgeting difficult for tribal governments.

Our first major recommendation is in response to the Congressional request regarding the state of infrastructure of Indian country. Our investigation shows that the right kinds of investments can promote social and economic prosperity in Indian country.

We therefore urge Congress to make a major investment in unmet essential utilities and core infrastructure projects in Native American communities, because investing in Native Americans strengthens our entire country and our economy. These investments would also help to improve health and provide jobs and help develop them economically.

If our recommendations are fully implemented, it would signify a new era of commitment to our nation's responsibilities for providing for the well-being of Native Americans, protecting their lands, and promoting self-government.

I'm very proud of these detailed and comprehensive findings and recommendations which provide Congress with a clear plan for honoring its responsibilities.
Finally, I note that our recommendation includes one related to the federal recognition of Native Hawaiians. Native Hawaiian poverty was one of the first issues I worked on 25 years ago when I first came to Washington, D.C. to work for the Japanese-American Citizens League when it had weighed in on the 1993 apology resolution to Native Hawaiians.

I'd like to acknowledge the late Senator Akaka and Senator Inouye of Hawaii who both sought legislation creating the process for a government-to-government relationship between the U.S. and Native Hawaiians.

It has been a quarter of a century since Congress apologized for the illegal overthrow of the Kingdom of Hawaii. The State of Hawaii recognizes them as indigenous peoples, and under the U.N. Declaration of Rights of Indigenous Peoples they have a right to self-determination.

The Department of Interior has created a process, and, at the appropriate time, Congress should act accordingly. The lack of formal recognition belies the trust relationship that has been long-standing.

Regional people can and do disagree about the details of how they should move forward in a
complex debate, but the fact that Native Hawaiians are indigenous is itself self-evident. The Civil Rights Commission should stand on the right side of history and approve these findings and recommendations. Thank you.

CHAIR LHAMON: Commissioner Heriot, this is Catherine Lhamon. I want to respond to your concerns specific to the timing. The point you raised about the request from you and from Commissioner Kirsanow that I not shorten the length of time to write reports is fair, and I have and remain committed to that commitment that I made when I joined the Commission. But we have not shorted the time period. And what we've done here specifically is to make sure that you do have time to be able to respond. I appreciate the concerns that you have about not having had additional hours at the end of the last fiscal year. Each of the Commissioners lives with a statutory restriction on the amount of time that we can spend, and I expect that the Staff Director's directions that you stop working came because you had hit the maximum hours for that fiscal year.

We need to move forward with this report because of the congressional request that we do so, as Commissioner Narasaki mentioned. My experience last
year with trying to release a report at the end of December was that we do hit against holidays and unavailability to be able to release the report, and we are coming very close to the end of that process.

In addition, the request, as I received it from you, was that you have additional time to vote no. You had committed already that you were going to vote against this report. So, what we've done in holding this telephonic meeting today is to preserve time, the 30 days, to be able to write a report and communicate the reasons you opposed, if that is your choice, in your statement, and that that time continues and we also can meet the obligations that Congress has imposed on us.

Is there any discussion?

COMMISSIONER HERIOT: I'd like to say something, Madam Chair, first in response to Commissioner Narasaki and bringing up the Hawaiian sovereignty issue in this report.

As you will recall, the Quiet Crisis report that this report is supposed to be an update of had nothing to do with Hawaiian sovereignty. This is brought up for the first time in the findings and recommendations, at the last minute.

The Commission, in the past, has actually
issued a report recommending the opposite, that Congress not pass what was then called the Native Hawaiian Government Reorganization Act. And this is something that's being slipped into the report at the last minute. It is a significant issue, although it has died down in recent years.

That law, that proposed law, was basically shelved quite some time ago. There was a move by the Department of Interior during the Obama Administration to do it by regulation, rather than statutorily. That has not worked out for them.

First of all, they got a lot of opposition from the Hawaiian sovereignty movement itself. Many people who were involved in this do not want recognition as a tribe. They actually want independence.

Moreover, there was a lawsuit that has prevented the election that was planned in connection with all of this. That election was stayed by Justice Kennedy and the Supreme Court and things have gotten bogged down a bit.

But the point is here that this report, this is out of blue that this issue would be incorporated into this report. I object to that very strenuously. I also understand your point that we
haven't limited the amount of time yet, although
that's on the agenda for next, to limit that period of
time. And therefore I don't really think that's a
fair statement to say we haven't limited time.

Also, with regard to whether people should
be able to work in late December, you know, I don't
have much sympathy for the point that, gosh, people
don't want to work in late December. This report
could have been completed on time, although there was
no particular reason to promise members of Congress
that we would get it done by the calendar year. That
was simply a gratuitous thing.

And as I've said, we have three reports
pending now. So the notion that, you know, it's a
fair way to say you can do one statement when there
are three other reports that have to be done at the
same time, no, I don't agree with that.

CHAIR LHAMON: I am very, very proud of
our Commission staff and our fellow Commissioners for
moving as many of the projects forward as quickly as
we have in the last year-and-a-half, and I appreciate
that that creates a work burden for all of us.

It is what we came here to do, and I'm
very, very pleased that we are able to publish as much
as we are publishing, and I look forward to the
publication for this report. Is there any further discussion?

COMMISSIONER HERIOT: One more comment. We could have gotten some of these reports done earlier so this would be spread out over the year, but it seems to be policy to do them all at the same time.

CHAIR LHAMON: Again, I very much appreciate our overburdened staff and the work that they're doing. And unless there's further discussion, I'm going to call the question and take a roll call vote.

COMMISSIONER YAKI: This Commissioner Yaki.

CHAIR LHAMON: Commissioner Yaki.

COMMISSIONER YAKI: Yeah, I would just like to respond a little bit to some statements made by the previous Commissioner.

While it may be in fact true, just like it is true that some people pay or don't pay their taxes, the fact is that the report that the previous Commissioner reference with regard to Native Hawaiians was so flawed in its execution that the Commission, which was then in the hands of a six-to-two majority of conservatives, stripped the report of all of its findings because it was a completely flawed document.
The research was flawed. The witnesses were flawed. It was, in many ways, a nadir of that Commission that they had to admit to removing that from it. So, we have an anomaly of a report where there is a single recommendation with no findings to support it. That is a fact.

Secondly, the mere fact that it took a recommendation -- again, based on no facts in evidence, because there were none -- does not mean this Commission may revisit the issue, as we have revisited of Section 5 of the Voting Rights Act, which the prior Commission had steadfastly refused not to endorse its authorization at the time, while this Commission has endorsed and moved to reinstate the provisions post-Shelby.

So, those are things that we can, and have done, and continue to do as members of the Commission. So I don't believe that really has any traction as well.

And, finally, just on the substantive point, it would be difficult to update an issue on Native Americans without having the opportunity to look at whether to include what I considered to be one of the most glaring examples of deliberate indifference by our government. And that has to do
with the sovereignty issue regarding Native Hawaiians, who have been singularly treated differently, despite the fact that the Hawaiians had the most recent extant form of government prior to their overthrow by the United States in the late 1800s. An overthrow, by the way, that led to the issuance of an apology resolution by the Congress a hundred years later.

It is an injustice that has yet to be righted, but the fact is that there are over 150 different programs in the federal government that recognize the distinction and the difference of Native Hawaiians. And to fail to go the extra step which deals with the issue of recognition and sovereignty I think is just a matter of indifference and lack of will, rather than based on any legal grounds whatsoever. So, in that respect, I disagree with the previous speaker as well.

Thank you very much. That concludes my remarks.

COMMISSIONER HERIOT: Madam Chair?

CHAIR LHAMON: Commissioner Heriot.

COMMISSIONER HERIOT: Just to point out that, you know, if you say the previous Commission was somehow unaware of the law, apparently Justice Kennedy disagrees since he issued the stay.
Moreover, I think this is a gross misrepresentation of Hawaiian history. The Kingdom of Hawaii, whether it was rightfully overthrown or not, was not a tribe. It was a multinational, multiethnic community, a magnet for immigration, and Native Hawaiians were a minority.

There was immigration from Portugal, immigration from the United States, immigration from Japan, immigration from China, immigration from Norway, and probably many other places that I've just forgotten about right now, and Native Hawaiians were a minority. That was the status of the very interesting, very modern constitutional monarchy.

And so to say that that means that a tribe somehow have existed even then, I don't think that they -- that Hawaiians at the time regarded themselves as a tribe. They were a multinational nation in some ways more liberal and more welcoming to immigration than even this country.

COMMISSIONER YAKI: Madam Chair, this is Commissioner Yaki. I have to respond. This well-worn recitation of interesting facts completely ignores the history of the Hawaiian people. It completely ignores the role that Queen Lili'uokalani played as the last monarch of Hawaii. It completely ignores the fact
that these were people who lived under a form of governance on islands for over 1,000 years before we came along.

To hold against them the fact that they didn't kill everyone who landed on their islands is ridiculous. To hold against them the fact that they welcomed participation of others is ridiculous.

The fact is that if you look at the history of Hawaiian people and the fact that their lands were systematically taken from them, but unlike other Native peoples, they were not able to be removed to settlements thousands of miles away from where they used to live, the fact that these were people who had their own language and their own culture, and continue to have a language and a culture, and to say that because foreign invaders to their shores managed to coexist with them somehow deprives them any less of their identity as Native Hawaiians is completely ridiculous.

COMMISSIONER HERIOT: Madam Chair? Madam Chair?

COMMISSIONER NARASAKI: I would just like to point out that the case law that Commissioner Heriot is referring to relates to the Fifteenth Amendment. It does not relate to the Fourteenth
Amendment.

I'd also like to point out that research on Native Hawaiians and the issue of their lack of recognition has been in the draft report from the very beginning. So, this is not news. This report has been in the works for almost three years. So, this is not a case where suddenly a report was pulled together in a haphazard fashion and Commissioners did not have time to adequately prepare. So I would like to call for the vote.

COMMISSIONER HERIOT: Madam Chair?

CHAIR LHAMON: Commissioner Heriot, go ahead.

COMMISSIONER HERIOT: Madam Chair?

CHAIR LHAMON: Commissioner Heriot, go ahead.

COMMISSIONER HERIOT: I just want to point out that the notion that these were invading groups into Hawaii, the King of Hawaii actually did a world tour to encourage immigration to the Kingdom of Hawaii.

Again, this is not some tribe. This is a modern constitutional monarchy that was multiethnic. It is not the case that up until the overthrow of Queen Lili'uokalani that this was a tribe. And I
think that's --

COMMISSIONER YAKI: Can I just --

COMMISSIONER HERIOT: -- an insult to the history of Hawaii which is far more dignified than that.

COMMISSIONER YAKI: I think it's again fascinating that the Cherokee Nation would wonder whether or not they ever called themselves a tribe. I think what Native American peoples choose to call themselves or recognize themselves is irrelevant to the history of whether or not their lands were expropriated from them and whether their form of government was taken away from them. Again, I wonder if many peoples of mainland North America ever thought of themselves as a "tribe." With that, I call the question.

CHAIR LHAMON: Thank you. I'll do the calling of the question, but thank you. As is obvious, all of the Commissioners have very strong views.

COMMISSIONER YAKI: I have a right to call the question as well. It's a privileged motion. Any member can make it. The question is whether it's one that requires a vote or not.

CHAIR LHAMON: Thank you.
COMMISSIONER HERIOT: Yaki's right on that.

CHAIR LHAMON: As I was saying, as is obvious, each of the Commissioners brings strong feelings to the civil rights issues in front of us and I very much appreciate that you have brought the expertise and the experience that we have to bear on this discussion today.

I am astonished by the rhetorical turn in the last comments by Commissioner Heriot referring to the Kingdom of Hawaii as, "this is not some tribe," and instead characterizing it as, "more dignified than that." That, I think, is disrespectful to other Native Americans who refer to themselves as tribes.

With that, let's move to take the roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: No.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOw: No.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.
CHAIR LHAMON: Commissioner Yaki?

Commissioner Yaki?

COMMISSIONER YAKI: Sorry, I was on mute.

Aye.

CHAIR LHAMON: Thank you. Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes. Two Commissioners opposed. No Commissioners abstained. All others were in favor.

Now we'll move to the amended item on the agenda, the motion from Commissioner Narasaki on statement timelines.

III. DISCUSSION REGARDING SHORTENING THE SURREBUTTAL PERIOD IN CONNECTION WITH THE BROKEN PROMISES REPORT

COMMISSIONER NARASAKI: Yes.

Unfortunately, I tried, as the Chair knows, I actually tried very hard to push back on the notion, originally, of trying to shorten the surrebuttal period. And we were able to work something out, but because Commissioner Kirsanow delayed the vote on this report, unfortunately we are forced to have to do this in order to be able to publish the report in a reasonable fashion.
As Commissioner Heriot earlier noted, it is very rare that a surrebuttal actually happens. It requires three votes from Commissioners in order to even move forward on to it. So I have sought to not cut the time for the Commissioner drafting or even the rebuttal. The only part I cut was the surrebuttal time because I think it's highly unlikely that anyone will actually need to do that.

I, myself, as someone who has been leading the effort on this, am against surrebuttals on principle. So, regardless of the provocation, I don't intend to do one. And I would be the most likely one to be provoked, so I am cutting off myself as well as other people.

What this would do is, instead of the surrebuttal notice window closing on Wednesday the 12th, it would close on the end of Monday, December 10th. And then surrebuttal would be due on the 12th. So, people would have more than enough time, two days, to write a surrebuttal.

As everyone knows, a surrebuttal is only supposed to be used if something new has come up in the rebuttal that wasn't anticipated in the earlier statements. And so, again, highly unlikely that this will actually inconvenience anyone. And I think it's
important in order to be able to get the report in a
timely fashion and respect the realities of staff who
have families and Commissioners who have families to
be able to realize the reality of the holidays at the
end of December.

CHAIR LHAMON: Thank you. Is there a
second to the motion?

COMMISSIONER YAKI: Commissioner Yaki
seconds.

CHAIR LHAMON: Thank you. Any discussion?
Hearing no discussion, I will say that, as
Commissioner Heriot mentioned, I have agreed not to
shorten the 30-day period over the objection of a
fellow Commissioner, and I understand that at least
one fellow Commissioner does object in this instance.

We are not here talking about the 30-day
period, but I think that the commitment that I made
extends in principle also to the surrebuttal time
period. So it is my plan to abstain from this vote.

I'm going to now call the question and
take a roll call vote. Commissioner Adegbile, how do
you vote?

I'm sorry, go ahead, Madam Vice Chair.

Madam Vice Chair, did I cut you off?

VICE CHAIR TIMMONS-GOODSON: No, well,
what I was going to say was that I will be abstaining from this vote. I've made some commitments that I intend to honor and I'll not get into this issue.

CHAIR LHAMON: Sorry, Commissioner Adegbile. You voted aye, is that correct?

COMMISSIONER ADEGBILE: That's correct, Madam Chair.

CHAIR LHAMON: Thank you. Commissioner Heriot?

COMMISSIONER HERIOT: No.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLABDENY: Abstain.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: And Madam Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Abstain.

CHAIR LHAMON: And I abstain. I think the motion has fails. Two Commissioners opposed.

COMMISSIONER NARASAKI: No, it passes. I have the General Counsel with me.

COMMISSIONER HERIOT: It passes. It would
have failed had the Commissioners who abstained actually voted no.

CHAIR LHAMON: Okay.

COMMISSIONER YAKI: There are three votes in favor, two and two. So we have three, three, two.

CHAIR LHAMON: Thank you. I miscounted. I'm sorry. Madam General Counsel, are you speaking?

GENERAL COUNSEL RUDOLPH: Sorry, I was going to say that the abstentions reduced the denominator from eight to five, and then there were three yeses. So it does pass with the three out of five.

CHAIR LHAMON: Thank you. So, to be clear, there are two no's, two abstentions, and three yes'es for this vote, and the motion passes. I appreciate the math in addition to the explanation.

(Simultaneous speaking.)

COMMISSIONER YAKI: It's the new three-fifths rule.

CHAIR LHAMON: I didn't mean any disrespect to Mr. Adegbile. I just hadn't him written down in the yes column. So, I missed. Commissioner Narasaki, were you saying something?

COMMISSIONER NARASKI: I was saying I heard you just say there were two abstentions. There
were three abstentions.

CHAIR LHAMON: Yes, thank you.

IV. ADJOURN MEETING

CHAIR LHAMON: And if there's nothing further, I hereby adjourn the meeting at 12:41 p.m. Eastern Daylight Time. Thank you.

(Whereupon, the above-entitled matter went off the record at 12:41 p.m.)