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U.S. COMMISSION ON CIVIL RIGHTS

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TELEPHONIC BUSINESS MEETING

+ + + + + **UNEDITED/UNOFFICIAL**

WEDNESDAY, OCTOBER 3, 2018

+ + + + +

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 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:

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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P R O C E E D I N G S

(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

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1 Narasaki?

2 COMMISSIONER NARASAKI: Here.

3 CHAIR LHAMON: Thank you. Commissioner
4 Yaki?

5 COMMISSIONER YAKI: Aye.

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

9 COURT REPORTER: I'm present.

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

12 STAFF DIRECTOR MORALES: I am present.

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

16 **I. APPROVAL OF AGENDA**

17 COMMISSIONER KIRSANOW: So moved.

18 CHAIR LHAMON: Thank you. Is there a
19 second?

20 COMMISSIONER KLADNEY: Kladney here. I'll
21 second.

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

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1 that would help.

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

4 COMMISSIONER NARASAKI: Yes, Madam Chair.

5 This is Commissioner Narasaki. I move to amend the
6 agenda to add a discussion regarding shortening the
7 surrebuttal period in connection with the Broken
8 Promises report.

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

11 COMMISSIONER YAKI: Commissioner Yaki and
12 I second.

13 COMMISSIONER ADEGBILE: Commissioner
14 Adegbile. Second.

15 CHAIR LHAMON: Thank you. If there are no
16 further amendments, let's vote to approve the agenda
17 as amended. All those in favor, say, "Aye."

18 (Chorus of ayes.)

19 CHAIR LHAMON: Any opposed?

20 COMMISSIONER HERIOT: I'm opposed.

21 CHAIR LHAMON: That was Commissioner
22 Heriot?

23 COMMISSIONER HERIOT: Yep.

24 CHAIR LHAMON: Thanks. Any abstentions?
25 The motion passes. One Commissioner opposed. No

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1 Commissioners abstained. All others were in favor.

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

6 **II. PROGRAM PLANNING**

7 **DISCUSSION AND VOTE ON COMMISSION REPORT**

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

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

17 CHAIR LHAMON: Thank you. Is there a
18 second?

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

21 CHAIR LHAMON: I'll offer a few points to
22 begin our discussion. First, I thank Commissioner
23 Narasaki for her leadership with this project,
24 particularly after we received a bipartisan request
25 from Congress to update the Commissioner's crisis

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1 report from 2003, and her staff, particularly
2 Katherine Culliton-Gonzalez, Maureen Rudolph, Sarale
3 Sewell, and Elizabeth Paukstis, as well as all the
4 other members of our staff who pitched in during the
5 development of this project, including the lengthy
6 drafting and research process. Thanks to all for
7 their efforts.

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

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

21 The federal government should provide
22 steady, equitable, and nondiscretionary funding
23 directly to tribal nations to support the public
24 safety, healthcare, education, housing, and economic
25 development of Native tribes and people.

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1 I'll open the floor now for discussion,
2 beginning with Commissioner Narasaki as the sponsor of
3 this project.

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

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

24 I'd also like to thank my fellow
25 Commissioners, our special assistants, especially my

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1 special assistant, Jason Lagria, and law clerks who
2 helped review and provide feedback on a pretty massive
3 report and the findings and recommendations.

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

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

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

24 When I did outreach during my first term
25 on the Commission, Native American leaders told me how

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1 extremely important and useful the Commission's 2003
2 report, "Quiet Crisis: Federal Funding and Unmet Needs
3 in Indian Country," had been in their work, and that
4 the report needed to be updated.

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

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

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

25 As the first peoples of our nation, their

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1 contributions to our country are invaluable. They
2 have joined with fellow Americans to build this
3 country and to defend it in time of war. They have
4 shared their vibrant cultures, arts, and traditions,
5 and their values, such as deep respect for family and
6 elders, shared responsibility to care for the land and
7 community, and commitment to future generations,
8 strengthens America.

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

16 Indeed, a recent study found that 40
17 percent of those Americans surveyed did not even think
18 that Native people still existed in the United States.

19 This is why it's so important that the Commission
20 continue to be a voice to highlight the critical
21 issues faced by American Indians, Alaska Natives, and
22 Native Hawaiians. Thank you.

23 CHAIR LHAMON: Thank you, Commissioner
24 Narasaki. Are there any other discussion or
25 amendments?

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1 Hearing none, I'll call the question and
2 take a roll call vote. Commissioner Adegbile, how do
3 you vote?

4 COMMISSIONER ADEGBILE: Aye.

5 CHAIR LHAMON: Commissioner Heriot?

6 COMMISSIONER HERIOT: I vote no.

7 CHAIR LHAMON: Commissioner Kirsanow?

8 COMMISSIONER KIRSANOW: No.

9 CHAIR LHAMON: Commissioner Kladney?

10 COMMISSIONER KLADNEY: Yes.

11 CHAIR LHAMON: Commissioner Narasaki?

12 COMMISSIONER NARASAKI: Yes.

13 CHAIR LHAMON: Commissioner Yaki?

14 COMMISSIONER YAKI: Aye.

15 CHAIR LHAMON: Vice Chair Timmons-Goodson?

16 VICE CHAIR TIMMONS-GOODSON: Yes.

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

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

23 COMMISSIONER NARASAKI: Yes, Madam Chair,
24 this is Commissioner Narasaki. I move for the
25 Commission to adopt the findings and recommendations

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1 circulated by my special assistant, Jason Lagria,
2 yesterday morning, Tuesday, October 2nd.

3 CHAIR LHAMON: Is there a second?

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

6 CHAIR LHAMON: Any discussion?

7 COMMISSIONER HERIOT: Madam Chair?

8 CHAIR LHAMON: Commissioner Heriot.

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

21 And so I object to this. I don't think we
22 should be considering the findings and recommendations
23 until our regular meeting. And at that point, we
24 would trigger our usual procedure for Commissioner
25 statements, rebuttals, and surrebuttals, if necessary.

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1 And, of course, usually they are not necessary.

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

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

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

18 I have been happy to cooperate in those
19 situations; for example, where our annual enforcement
20 report just had to get done, and therefore curtailing
21 the number of days available I think is the right
22 thing. I've been willing to curtail the number of
23 days available on several occasions now. But, when
24 are we going to have an ordinary report where we don't
25 try to stuff it down my throat?

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1 COMMISSIONER NARASAKI: So, Madam Chair,
2 this is Commissioner Narasaki. I would like to
3 respond to that.

4 CHAIR LHAMON: Okay. Go ahead,
5 Commissioner Narasaki.

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

14 COMMISSIONER HERIOT: Oh, heavens. Oh,
15 heavens.

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

24 II. PROGRAM PLANNING

25 DISCUSSION AND VOTE ON COMMISSION

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FINDINGS AND RECOMMENDATIONS

1
2 COMMISSIONER NARASAKI: Tragically, Native
3 Americans continue to rank near or at the bottom of
4 most social, health, and economic indicators. Too
5 many Native Americans face a gauntlet of challenges
6 that spans their entire lives, from increased infant
7 mortality rates, shorter life expectancies, higher
8 rates of poverty, lower completion of college,
9 unemployment, being victims of crime, including rape,
10 to alcoholism, diabetes, and suicide.

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

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

24 Moreover, funding for Native American
25 programs is often discretionary, and Congress often

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1 provides funding for Native American programs in a
2 manner that makes long-term planning and budgeting
3 difficult for tribal governments.

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

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

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

22 I'm very proud of these detailed and
23 comprehensive findings and recommendations which
24 provide Congress with a clear plan for honoring its
25 responsibilities.

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1 Finally, I note that our recommendation
2 includes one related to the federal recognition of
3 Native Hawaiians. Native Hawaiian poverty was one of
4 the first issues I worked on 25 years ago when I first
5 came to Washington, D.C. to work for the Japanese-
6 American Citizens League when it had weighed in on the
7 1993 apology resolution to Native Hawaiians.

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

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

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

24 Regional people can and do disagree about
25 the details of how they should move forward in a

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1 complex debate, but the fact that Native Hawaiians are
2 indigenous is itself self-evident. The Civil Rights
3 Commission should stand on the right side of history
4 and approve these findings and recommendations. Thank
5 you.

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

23 We need to move forward with this report
24 because of the congressional request that we do so, as
25 Commissioner Narasaki mentioned. My experience last

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1 year with trying to release a report at the end of
2 December was that we do hit against holidays and
3 unavailability to be able to release the report, and
4 we are coming very close to the end of that process.

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

15 Is there any discussion?

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

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

25 The Commission, in the past, has actually

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

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

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

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

22 But the point is here that this report,
23 this is out of blue that this issue would be
24 incorporated into this report. I object to that very
25 strenuously. I also understand your point that we

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1 haven't limited the amount of time yet, although
2 that's on the agenda for next, to limit that period of
3 time. And therefore I don't really think that's a
4 fair statement to say we haven't limited time.

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

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

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

23 It is what we came here to do, and I'm
24 very, very pleased that we are able to publish as much
25 as we are publishing, and I look forward to the

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1 publication for this report. Is there any further
2 discussion?

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

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

12 COMMISSIONER YAKI: This Commissioner
13 Yaki.

14 CHAIR LHAMON: Commissioner Yaki.

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

18 While it may be in fact true, just like it
19 is true that some people pay or don't pay their taxes,
20 the fact is that the report that the previous
21 Commissioner reference with regard to Native Hawaiians
22 was so flawed in its execution that the Commission,
23 which was then in the hands of a six-to-two majority
24 of conservatives, stripped the report of all of its
25 findings because it was a completely flawed document.

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1 The research was flawed. The witnesses
2 were flawed. It was, in many ways, a nadir of that
3 Commission that they had to admit to removing that
4 from it. So, we have an anomaly of a report where
5 there is a single recommendation with no findings to
6 support it. That is a fact.

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

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

20 And, finally, just on the substantive
21 point, it would be difficult to update an issue on
22 Native Americans without having the opportunity to
23 look at whether to include what I considered to be one
24 of the most glaring examples of deliberate
25 indifference by our government. And that has to do

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1 with the sovereignty issue regarding Native Hawaiians,
2 who have been singularly treated differently, despite
3 the fact that the Hawaiians had the most recent extant
4 form of government prior to their overthrow by the
5 United States in the late 1800s. An overthrow, by the
6 way, that led to the issuance of an apology resolution
7 by the Congress a hundred years later.

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

18 Thank you very much. That concludes my
19 remarks.

20 COMMISSIONER HERIOT: Madam Chair?

21 CHAIR LHAMON: Commissioner Heriot.

22 COMMISSIONER HERIOT: Just to point out
23 that, you know, if you say the previous Commission was
24 somehow unaware of the law, apparently Justice Kennedy
25 disagrees since he issued the stay.

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1 Moreover, I think this is a gross
2 misrepresentation of Hawaiian history. The Kingdom of
3 Hawaii, whether it was rightfully overthrown or not,
4 was not a tribe. It was a multinational, multiethnic
5 community, a magnet for immigration, and Native
6 Hawaiians were a minority.

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

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

20 COMMISSIONER YAKI: Madam Chair, this is
21 Commissioner Yaki. I have to respond. This well-worn
22 recitation of interesting facts completely ignores the
23 history of the Hawaiian people. It completely ignores
24 the role that Queen Lili'uokalani played as the last
25 monarch of Hawaii. It completely ignores the fact

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1 that these were people who lived under a form of
2 governance on islands for over 1,000 years before we
3 came along.

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

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

20 COMMISSIONER HERIOT: Madam Chair? Madam
21 Chair?

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

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1 Amendment.

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

11 COMMISSIONER HERIOT: Madam Chair?

12 CHAIR LHAMON: Commissioner Heriot, go
13 ahead.

14 COMMISSIONER HERIOT: Madam Chair?

15 CHAIR LHAMON: Commissioner Heriot, go
16 ahead.

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

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

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1 think that's --

2 COMMISSIONER YAKI: Can I just --

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

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

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

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

25 CHAIR LHAMON: Thank you.

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1 COMMISSIONER HERIOT: Yaki's right on
2 that.

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

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

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

17 COMMISSIONER ADEGBILE: Aye.

18 CHAIR LHAMON: Commissioner Heriot?

19 COMMISSIONER HERIOT: No.

20 CHAIR LHAMON: Commissioner Kirsanow?

21 COMMISSIONER KIRSANOW: No.

22 CHAIR LHAMON: Commissioner Kladney?

23 COMMISSIONER KLADNEY: Yes.

24 CHAIR LHAMON: Commissioner Narasaki?

25 COMMISSIONER NARASAKI: Yes.

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1 CHAIR LHAMON: Commissioner Yaki?
2 Commissioner Yaki?

3 COMMISSIONER YAKI: Sorry, I was on mute.
4 Aye.

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

7 VICE CHAIR TIMMONS-GOODSON: Yes.

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

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

14 **III. DISCUSSION REGARDING SHORTENING THE**
15 **SURREBUTTAL PERIOD IN CONNECTION WITH THE**
16 **BROKEN PROMISES REPORT**

17 COMMISSIONER NARASAKI: Yes.
18 Unfortunately, I tried, as the Chair knows, I actually
19 tried very hard to push back on the notion,
20 originally, of trying to shorten the surrebuttal
21 period. And we were able to work something out, but
22 because Commissioner Kirsanow delayed the vote on this
23 report, unfortunately we are forced to have to do this
24 in order to be able to publish the report in a
25 reasonable fashion.

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1 As Commissioner Heriot earlier noted, it
2 is very rare that a surrebuttal actually happens. It
3 requires three votes from Commissioners in order to
4 even move forward on to it. So I have sought to not
5 cut the time for the Commissioner drafting or even the
6 rebuttal. The only part I cut was the surrebuttal
7 time because I think it's highly unlikely that anyone
8 will actually need to do that.

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

15 What this would do is, instead of the
16 surrebuttal notice window closing on Wednesday the
17 12th, it would close on the end of Monday, December
18 10th. And then surrebuttal would be due on the 12th.
19 So, people would have more than enough time, two
20 days, to write a surrebuttal.

21 As everyone knows, a surrebuttal is only
22 supposed to be used if something new has come up in
23 the rebuttal that wasn't anticipated in the earlier
24 statements. And so, again, highly unlikely that this
25 will actually inconvenience anyone. And I think it's

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1 important in order to be able to get the report in a
2 timely fashion and respect the realities of staff who
3 have families and Commissioners who have families to
4 be able to realize the reality of the holidays at the
5 end of December.

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

8 COMMISSIONER YAKI: Commissioner Yaki
9 seconds.

10 CHAIR LHAMON: Thank you. Any discussion?

11 Hearing no discussion, I will say that, as
12 Commissioner Heriot mentioned, I have agreed not to
13 shorten the 30-day period over the objection of a
14 fellow Commissioner, and I understand that at least
15 one fellow Commissioner does object in this instance.

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

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

23 I'm sorry, go ahead, Madam Vice Chair.
24 Madam Vice Chair, did I cut you off?

25 VICE CHAIR TIMMONS-GOODSON: No, well,

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1 what I was going to say was that I will be abstaining
2 from this vote. I've made some commitments that I
3 intend to honor and I'll not get into this issue.

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

6 COMMISSIONER ADEGBILE: That's correct,
7 Madam Chair.

8 CHAIR LHAMON: Thank you. Commissioner
9 Heriot?

10 COMMISSIONER HERIOT: No.

11 CHAIR LHAMON: Commissioner Kirsanow?

12 COMMISSIONER KIRSANOW: No.

13 CHAIR LHAMON: Commissioner Kladney?

14 COMMISSIONER KLADNEY: Abstain.

15 CHAIR LHAMON: Commissioner Narasaki?

16 COMMISSIONER NARASAKI: Yes.

17 CHAIR LHAMON: Commissioner Yaki?

18 COMMISSIONER YAKI: Aye.

19 CHAIR LHAMON: And Madam Vice Chair?

20 VICE CHAIR TIMMONS-GOODSON: Abstain.

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

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

25 COMMISSIONER HERIOT: It passes. It would

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1 have failed had the Commissioners who abstained
2 actually voted no.

3 CHAIR LHAMON: Okay.

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

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

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

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

17 (Simultaneous speaking.)

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

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

24 COMMISSIONER NARASAKI: I was saying I
25 heard you just say there were two abstentions. There

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1 were three abstentions.

2 CHAIR LHAMON: Yes, thank you.

3 **IV. ADJOURN MEETING**

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

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

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