The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C. at 10:00 a.m., Catherine E. 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 KLANDNEY, Commissioner
KAREN K. NARASAKI, Commissioner*
MICHAEL YAKI, Commissioner*
MAURO MORALES, Staff Director
MAUREEN RUDOLPH, General Counsel

* Present via telephone
STAFF PRESENT:
LASHONDA BRENSON
KATHERINE CULLITON-GONZALEZ
BARBARA DE LA VIEZ
PAMELA DUNSTON, Chief, ASCD
YOURSA ELKHAITA
ALFREDA GREENE
TINALOUISE MARTIN, OM
MARTHA MARR
WARREN ORR
SARALE SEWELL
JUANDA SMITH
BRIAN WALCH
MARIK XAVIER-BRIER
MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:
SHERYL COZART
JASON LAGRIA
CARISSA MULDER
AMY ROYCE
RUKKU SINGLA
ALISON SOMIN
IRENA VIDULOVIC
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10:01 a.m.

CHAIR LHAMON: This meeting of the U.S. Commission on Civil Rights comes to order at 10:01 a.m. on December 7, 2018. The meeting takes place at the Commission's headquarters, located at 1331 Pennsylvania Avenue Northwest, Washington, D.C.

I'm Chair Catherine Lhamon and the Commissioners who are present in addition to me are Commissioner Adegbile, Commissioner Heriot, Commissioner Kirsanow, and Commissioner Kladney.

On the phone, please confirm that you are on the line after I say your name. I believe we have Commissioner Yaki?

COMMISSIONER YAKI: Here.

CHAIR LHAMON: And Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: Thank you. I understand Commissioner Narasaki will be joining us later and she'll let us know when she's on the line. A quorum of the Commissioners is present. Is the court reporter present?

COURT REPORTER: Here.

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

STAFF DIRECTOR MORALES: Present.

CHAIR LHAMON: Thank you. The meeting now comes to order.

I. APPROVAL OF AGENDA

CHAIR LHAMON: Is there a motion to approve the agenda for this business meeting?

COMMISSIONER KLADNEY: I move to approve the agenda.

CHAIR LHAMON: Thank you.

VICE CHAIR TIMMONS-GOODSON: This is Vice Chair Timmons-Goodson, so moved.

CHAIR LHAMON: Thank you. I'm going to treat that as a motion and a second. I'll begin the call for amendments with several of my own.

First, I move to amend to take off the presentation from our Connecticut State Advisory Committee Chair, who unfortunately could not make it for today's meeting. We hope to hear from him in January.

Second, I move to amend for consideration of a statement I propose on the Commission's legislative and oversight priorities for the new Congress.

And third, I move to amend for
consideration of several statements that Commissioner Narasaki will introduce, but she could not be here with us at the outset of the meeting.

Those items are for consideration of a letter to HHS [Department of Health and Human Services] regarding the definition of sex; a letter to DHS [Department of Homeland Security] for public comment submission on the public charge proposed rule; and third is a statement on citizenship.

Is there a second for my amendments?

COMMISSIONER KLADNEY: I so move, second.

CHAIR LHAMON: Thank you. Any other amendments?

COMMISSIONER YAKI: I have an amendment.

CHAIR LHAMON: Commissioner Yaki, go ahead.

COMMISSIONER YAKI: Yes, I would just like to add to the agenda an item to change the dates for the statements due on the Stand Your Ground Report.

CHAIR LHAMON: Is there a second?

COMMISSIONER KLADNEY: Kladney, I'll second.

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

II. BUSINESS MEETING

PRESENTATION BY RHODE ISLAND ADVISORY COMMITTEE

CHAIR ON THE COMMITTEE'S RECENTLY RELEASED REPORT,

PAYDAY LENDING IN RHODE ISLAND

CHAIR LHAMON: We'll now hear over the phone from our Rhode Island Advisory Committee Chair, Jennifer Steinfeld, on the Committee's recently released report titled Payday Lending in Rhode Island. Chair Steinfeld, we look forward to hearing from you for ten minutes.

MS. STEINFELD: Wonderful, thank you so much for having us speak today and for all of the support that you've given to this effort. I'm really pleased to be able to give you an overview of how we arrived at our report.

But first, I want to thank Barbara De La Viez and Evelyn Bohor, and an intern over the summer, Nicole Carroll, who were incredibly instrumental in preparing this report and in helping our Committee come together.

We were reappointed just over a year ago and have been lucky to be very active since that time.
We quickly realized in our reconstitution that we had an opportunity to have a substantial local impact on an important public policy issue around payday lending.

There was legislation that had been pending for several years, Rhode Island legislative consideration is an annual consideration, so legislation is reintroduced annually in January.

And there had been no motion, but there was a piece of pending legislation in the spring of this year that was some energy behind it and needed an extra boost.

So, we were able to convene a hearing on April 27, 2018, where we brought together members of the public. And that was our first in-person meeting since our reconvening.

We had invited representation from a wide variety of stakeholders, for several panels, speaking about the issue of payday lending in the state of Rhode Island.

And I'm sure you've all read the report, but we invited representations from the payday lending industry, their lobbyists, as well as some legislators who had been opposing the legislation, without any response, which Barbara De La Viez has told me is very
unusual for her, as a federal official, to have no response to her calls.

We had unanimous information that not only articulated the harm of payday lending, which I think we were all clear about, but also, really articulated clearly the explicit targeting of both low-income people and people of color.

And most compelling to me was a map that was brought to us by a local advocacy organization - the Economic Progress Institute - that showed an overlay of maps of the census tracts with the highest proportion of the African American community in our state, that overlapped consistently with the map of the highest concentration of payday lenders in the state.

So, clearly a significant effort on behalf of the lending industry to really look at low-income people, looking at particularly low-income people of color.

Another interesting finding was that one of the arguments that's often made against payday lending is that it serves an important service for people who don't have access to traditional banking.

But another finding that we had was that, in fact, to receive a payday loan, you must have a
bank account and a job in order to get a payday loan.

So, that's actually not true, it's not serving an un-banked industry.

We also found that there are several local alternatives, including a local credit union that provides emergency loans and a local CDFI, Community Development Financial Institution, that offers lower interest loan alternatives.

So, we were able to pull together a summary of our findings to do advocacy in support of that legislation in the spring and two of our members met with the Speaker of the House, who has been a consistent opponent of the limitations.

So, essentially payday lenders have a carve-out from the state usury laws. And so, there's been legislation to try to put them back into the state usury statute, which limits the interest rate, I think at 28 percent.

And our members found not only did they -- they expected to have a very short, cordial meeting, where they were sort of given the brush-off, but they actually had an incredibly hostile 20-minute conversation, where the Speaker of the House rejected any findings that there was a civil right violation or that these loans created debt traps, despite evidence
to the contrary.

So, we then moved tactics. He was up for reelection this fall, he was reelected in a very close race, and was just reelected as the Speaker of the House. So, it's unclear what the future of legislation will be this year.

But two of our members on our Advisory Committee are also part of an advocacy effort on this issue. And we'll be meeting next week, so they'll be updating us on what we can do for the 2019 legislative session.

Technically, our work on this issue concluded with the issuance of our report, but we just had a letter from Chair Lhamon go out to legislators outlining the recommendations that we made around payday loan alternatives, recommending legislative action to restrict the maximum interest rate to 36 percent APR and this is a recommendation to get the payday lenders back into alignment with the state usury laws.

So, stay tuned for additional advocacy on this important issue that's certainly impacting our community quite significantly. And I'll be happy to take any questions.

CHAIR LHAMON: Thanks so much, Chair
Steinfeld. I'll open for questions from my fellow Commissioners. I see Commissioner Kladney has a question.

COMMISSIONER KLADNEY: I just would like to make a statement. I thought the report was well done. We had proposed at one time, in my office, to do a briefing here on payday lending and we subsequently didn’t do it.

But what our research found, and I don’t know if -- I don’t think Rhode Island has very many military bases. But where there are military bases, these payday lending stores line the entranceway to the main gate, because a lot of soldiers and sailors use those services.

And as a result, if they miss a payment, the payday lending place can just get a hold of their commanding officer and they withhold from their pay. And it’s really been quite a detriment to military members.

I just wanted to make that statement, but I thought your report was excellently done. Thank you.

MS. STEINFELD: Thank you. We actually did reach out, we have a naval base and the Naval War College is located here in Rhode Island.
We did reach out to military and the statement that they gave us is that there actually is a federal regulation that is now no longer allowing payday lenders to -- they consider it to be a troop insecurity issue to loan to active duty military.

So, it's quite a significant issue for the military and they've taken action as well, which I think strengthens the power of our report.

COMMISSIONER KLABDEY: Thank you.

CHAIR LHAMON: Thank you. No questions?

COMMISSIONER HERIOT: I guess I have some questions.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Thank you for that presentation. I was just working out what 26 percent would be on a $200 loan.

MS. STEINFELD: I'm sorry, it's actually 36 percent, 36 percent.

COMMISSIONER HERIOT: It's written here as 36, but I don't think it's going to make any difference to my point. And that's less than $3 on a two-week loan, which is probably too little to make processing worth it.

One response that a payday lender could have to that would be to declare that it would make tiny loans
and make larger ones, where the interest rate might pay at least the processing costs.

And they might demand of people who are desperate for the money that they borrow more than they would ordinarily need. Is this something that you gave some thought to?

MS. STEINFELD: The information that we have is that, actually, the business model does not make a profit on the initial loan. It requires that the -- the business model actually requires the debt trap to be viable.

So, it requires people to take multiple loans out and pay an initiation fee, as well as the interest rate, over a period of time. And the model requires around four loans. Most people we found were taking around six to eight loans in order to be able to pay it back.

It's very unlikely if, in one pay period you don't have, let's say $500 to fix your car, that you have an extra $500 in the next pay period, that you have earnings in excess of the loan amount.

And so, really, this model is about keeping people in multiple loans, which is in violation, I mean, they're not technically in violation, but in violation of the spirit of the state
usury laws as well.

COMMISSIONER HERIOT: Yes, but that just makes my point --

MS. STEINFELD: So, there are --

COMMISSIONER HERIOT: -- all the more telling. If that's the business model, then the loan's going to be larger now. And so, keeping the interest rate down will actually make things worse, rather than make them better.

MS. STEINFELD: Well, I think our hope is that there will be an increase in alternative lending sources, including, as I said, there is a local credit union and a local CDFI that offer --

COMMISSIONER HERIOT: Again, they're going to want --

MS. STEINFELD: -- emergency loans and those are --

COMMISSIONER HERIOT: -- the larger loans. They're going to want the larger loans, which is going to make --

MS. STEINFELD: No, no, no --

COMMISSIONER HERIOT: -- the matter worse rather than better.

MS. STEINFELD: -- they're limited to --

COMMISSIONER HERIOT: Things exist because
CHAIR LHAMON: Commissioner Heriot?

MS. STEINFELD: They're limited to --

COMMISSIONER KLABNEY: Madam Chair, can people go one at a time?

COMMISSIONER HERIOT: -- there's a market for them.

CHAIR LHAMON: Commissioner Heriot, we should let the Chair of the SAC speak, at least allow for a transcript.

MS. STEINFELD: Yes, I apologize. Those emergency loans are actually limited, in one case, to $500, and in another case, to $750.

They are quite small and they are not designed -- they're a break-even product for the lenders. These are services that are being offered to the community.

One of the lenders is a credit union and they're offering it to their members, because they were noticing that a number of their members were having their bank accounts closed due to overdraw, and the overdraw is being done by the payday lenders.

And so, they started offering this product to their members, because they spoke to their members who actually don't want to see their bank accounts
shut down, but were in a short-term capital need.

And the local CDFI is mission-oriented towards reducing poverty by reducing debt traps. And so, they too offer emergency loan product. I should say, I'm on the board of that organization, I'm the treasurer of the board of that organization.

And that's a money loser for the CDFI, but it's offered as a mission-oriented product. The loan origination does cost more money than the loan generates.

COMMISSIONER HERIOT: What organization are you on the board of?

MS. STEINFELD: The Capital Good Fund, which is a Community Development Financial Institution.

COMMISSIONER HERIOT: And is that a paid position?

MS. STEINFELD: No.

COMMISSIONER HERIOT: Is anybody on the SAC in a paid position from that?

MS. STEINFELD: No.

COMMISSIONER HERIOT: You had mentioned two members are interested in advocacy here, is there someone else from the organization that's on the SAC?

MS. STEINFELD: Not from that organization.
There are two members, one from the State Council of Churches, which is very engaged in advocacy around this, and one from an organization called NeighborWorks, which is mostly focused on housing, but also is working on this issue as --

COMMISSIONER HERIOT: Is either of those positions --

MS. STEINFELD: -- predatory, as well --

COMMISSIONER HERIOT: -- a paid position?

CHAIR LHAMON: Commissioner Heriot, I'm going to ask you again to let Chair Steinfeld speak before you speak so that we can have a clear transcript.

MS. STEINFELD: Yes, those are their professional positions, I believe both.

COMMISSIONER HERIOT: Okay. And which members are those?

MS. STEINFELD: That's Member Morriseau and Member Anderson.

COMMISSIONER HERIOT: From which organizations? Which one goes with which?

MS. STEINFELD: Member Anderson from the State Council of Churches and Member Morriseau from NeighborWorks Blackstone Valley.

COMMISSIONER HERIOT: I guess I would
continue on this point that, like, you may be making
this worse.

You're talking about people who are
desperate for credit. And you can dry up that credit
or you can make that amount larger. Drying up that
credit may drive them to other acts of desperation.

MS. STEINFELD: That's certainly possible,
but we don't think that it should be allowable to
create something that is so predatory on people, when
there are alternative sources available.

CHAIR LHAMON: Chair Steinfeld, I wanted to
follow up on that question. This is Chair Lhamon.

The report notes that you have a set of
recommendations for what Rhode Island should do to
investigate the underlying financial circumstances
that leave Rhode Islanders, and particularly Rhode
Islanders of color especially, in need of the credit
advances that payday loans provide.

And you also mentioned that your State
Advisory Committee plans, next week, to discuss
possible next steps following from this report.

I wonder if one possibility for your
Advisory Committee might be to investigate those
underlying reasons and to address the civil rights
issues that follow from that level of financial
insecurity for Rhode Islanders.

    MS. STEINFIELD: Yes, absolutely. And it is
certainly something that we're interested in looking
at and just seeing if there are other areas where our
Commission can investigate potential civil rights
violations that lead to what we see as a significant
income disparity based on race.

    CHAIR LHAMON: I was very taken with the
thoroughness of this report. And I also appreciate
your noting at the beginning of your presentation that
your Advisory Committee has seized on your
reappointment as a moment to deliver results from your
expertise.

    And so, thank you for your productivity
and also for the detail in this report. I generally
am not, and in this instance am not, recommending a
particular topic for any State Advisory Committee to
take up.

    I was very taken with the quantum of
information that you took in on this topic and the
kinds of civil rights issues that could follow in
addition to the specific recommendations about payday
loan caps that your report includes.

    COMMISSIONER YAKI: I have a question to
ask. I have a question, Madam Chair.
CHAIR LHAMON: Commissioner Yaki, go ahead.

COMMISSIONER YAKI: Yes. Thank you very much for this report. Have -- did your Committee review at all the proposed payday regulations proposed by the CFPB and did they have any response to the fact that the CFPB is now indicated it's going to reconsider those rules that were enacted in the last year of the Obama Administration?

MS. STEINFELD: We did have somebody present from the CFPB and we do have some information. We have not considered it in light of the reconsideration. However, I will say that the reconsideration is largely due to the question that was brought up by a member around access to credit.

And knowing that in our state, there are alternative credit sources, really makes that be a specific recommendation for our state, whereas, if there was not alternative access to capital, we might have a different finding.

COMMISSIONER YAKI: Got it, thank you.

COMMISSIONER ADEGBILE: Madam Chair?

CHAIR LHAMON: Commissioner Adegbile?

VICE CHAIR TIMMONS-GOODSON: Madam Chair, this is Vice Chair Timmons-Goodson, I have a brief question.
CHAIR LHAMON: Go ahead, Vice Chair.

VICE CHAIR TIMMONS-GOODSON: Yes. I see in the report where you discuss the adverse effect that payday loans have on the state economy.

I thought that was interesting, because rarely do we think about the effect on the state's economy, we usually focus on the individual. Would you mind saying a word or two more about the adverse effect on Rhode Island's economy?

MS. STEINFELD: Sure. Essentially, we have a significant enough portion of our population, especially our low-income population, who, rather than spending their income generating sales or et cetera, they're spending their income paying back payday lenders.

And the payday lenders are not located in Rhode Island, that's not money that stays locally. You can make an argument that there are some employees, et cetera, who work locally, but that tends to be a very small proportion of the money that's actually staying as part of our local economy.

So, it's essentially taking money from our lower income folks, many of whom are receiving state subsidies as well, and it's extracting that out of our state economy and moving that to national corporations.
and, therefore, not generating wealth.

In addition to more intangible costs of stress, anxiety, et cetera, for people who get stuck in this debt trap.

VICE CHAIR TIMMONS-GOODSON: Thank you very much.

MS. STEINFELD: Sure.

CHAIR LHAMON: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Yes. Thank you very much for this report. I was just wondering if the industry has explained or offered any explanation about why the phenomenon that you describe on Page 12 exists?

On Page 12 of the report, you write, when comparing neighborhoods with the same median income, neighborhoods with significant black and Latino populations had a 70 percent higher concentration of payday loan stores that white neighborhoods at the same income level.

Have we heard from the industry about what the rationale of that economic model is?

MS. STEINFELD: We did not even get the courtesy of a return phone call turning down an opportunity to present at our briefing. So, no, we have not heard any response from the industry.
COMMISSIONER ADEGBILE: Has anybody elsewhere offered a rationale about why that pattern would exist?

MS. STEINFELD: The only rationale that we have seen is from people with a particular advocacy position, but the argument is that, based in historical inequality in terms of access to credit and suspicion or doubt about the ability of banks to serve people, as well as a history of red-lining, and lack of access to actual lending institutions in low-income communities.

COMMISSIONER ADEGBILE: Thanks. One other question, on the points that Commissioner Heriot raised, do financial institutions have an independent duty when they're lending to figure out whether or not somebody whom they're lending to has the ability to repay a loan?

MS. STEINFELD: Traditional lenders do have that requirement, payday lenders do not.

COMMISSIONER ADEGBILE: And so, would it necessarily be the rational choice of a lender who determines that they can't lend a low amount of money to lend more money, a higher sum of money, in the way that Commissioner Heriot posits?

MS. STEINFELD: Again, for a traditional
banking institution, certainly not. For a payday lender, they essentially are doing an unsecured loan and so, they would have -- it would depend on whether the business model made sense for them, I guess, whether they have a higher default rate than makes it worthwhile.

COMMISSIONER ADEGBILE: Thanks very much.

CHAIR LHAMON: Hearing no further questions, Ms. Steinfeld, thank you so much for your service and your leadership on the Rhode Island State Advisory Committee and for taking the time to speak with us today. We very much appreciate your presentation.

MS. STEINFELD: Thank you so much.

PRESENTATION BY VERMONT ADVISORY COMMITTEE CHAIR ON THE COMMITTEE'S RECENTLY RELEASED ADVISORY MEMORANDUM, HOUSING DISCRIMINATION IN VERMONT, A HANDSHAKE AND A SMILE

CHAIR LHAMON: And we'll move to our next item on the agenda, which is to hear from our Vermont Advisory Committee Chair, Curtiss Reed, Junior, on the Committee's recently released Advisory Memorandum titled Housing Discrimination in Vermont, a Handshake and a Smile. Chair Curtiss Reed, we'll enjoy hearing from you for ten minutes.
MR. REED: Good morning from yet another sub-freezing day in Vermont.

(Laughter.)

MR. REED: My speech may falter here and there as I'm still recovering from lingering respiratory issues due to a bout of bronchitis. So, this will be a slow presentation.

On behalf of all the members of the Vermont State Advisory Committee, I thank the Commission for the opportunity to brief the Commissioners on the housing discrimination in Vermont.

In addition, we wish to thank the staff of the Commission's Eastern Regional Office, particularly Barbara De La Viez, for her decades-long support and counsel to the Vermont SAC.

Vermont, by most any definition, is a small place, whether measured by land mass, population, or productivity.

Our population of less than 624,000 residents, 10.3 percent of us are disabled, 5.5 percent of us are ethnic or racial minorities, and 4.5 percent of us are foreign-born, according to the latest census data.

We live on a human scale, where there is
seemingly a one-degree separation between any two residents. Our tendency is not to fight with our neighbor, lest we would need them to push our car out of the snowbank during the winter or muddy road during mud season.

And while our numbers are small, the impact of civil rights abuses on those of us in protected categories looms forever large.

Our memorandum titled Housing Discrimination in Vermont, a Handshake and a Smile, reflects on the one hand, a culture where everyone needs to get along.

However, on the other hand, landlords and property owners who do not fully understand their legal obligations perpetuate housing discrimination, particularly for those of us with disabilities, ethnic or racial minorities, or foreign-born.

Since our briefing, Vermont, as part of its obligation to affirmatively further fair housing, last prepared its required analysis of impediments in 2017.

This 2017 update to the 200-page 2012 report found that 46 Vermont fair-housing complaints were filed with federal or state agencies between January 2013 and July 2016.
Over half of these complaints involved discrimination on the basis of disability, while the rest involve discrimination on the basis of familial status or presence of minor children, race, color, and sex.

In addition, 189 people called Legal Aid and made a housing discrimination complaint with Vermont Legal Aid between March 2015 and November 2016.

The majority of these complaints, 68 percent, were related to disability discrimination. The remaining complaints involved discrimination based on other protected categories.

The analysis of impediments report found that discrimination based on disability, familial status, and other protected categories continues to occur in Vermont.

The report also found that the supply of affordable housing, especially affordable and accessible housing, in Vermont is inadequate.

Based on the information gathered by this review, the Committee believes that housing discrimination likely persists in Vermont. In part, because many landlords do not fully understand their legal obligations.
It is also clear that the lack of affordable housing in the state makes it even harder for individuals of color and individuals with disabilities in Vermont, who are often also low-income, to find housing.

At the same time, the Committee's inquiry into housing discrimination has been impeded by its inability to independently investigate complaints.

For that reason, it is difficult for the Committee to complete a meaningful assessment of whether and the extent to which Vermont residents seeking housing are discriminated against based on the basis of race, disability, color, national origin, sex, religion, familial status, age, marital status, sexual orientation/gender identity, and the receipt of public assistance.

Based on available literature and testimony at the briefing, the Committee acknowledges persistence of housing discrimination in the state and its effect on Vermont residents of color and individuals with disabilities.

The Committee notes that additional training and education for landlords and other housing professionals regarding their legal obligations under the Fair Housing Act and the Vermont Fair Housing Act
has the potential to reduce housing discrimination in Vermont.

It may also be beneficial to expand the efforts to inform tenants of their rights under the laws. In other states, this has been accomplished through the use of flyers and bus advertisements that educate readers on types of prohibited discrimination.

The Committee also identified a need for a housing discrimination hotline that would allow landlords and tenants to access information on what practices are discriminatory.

I thank you for suffering through my halting voice, but I'm open to taking questions. Thank you.

CHAIR LHAMON: Chair Reed, thank you very much for your presentation, and also, thank you for sticking with us notwithstanding illness. We very much appreciate it.

I'll open for questions from my fellow Commissioners. While people are formulating thoughts, I'll jump in with a few questions of my own.

Chair Reed, I notice that the penultimate page of your report, a reference to the analysis of impediments submitted in 2017 from the state, and your description of that notes that there were 46 fair
housing complaints filed with federal and state agencies in a three-year period that report on the analysis of impediments, and separately, that there were 189 people who had called the Legal Aid Office in Vermont in, let's say, a six-month period, from March 2015 to November of 2016.

I wonder if you and your fellow Committee members were able to form views about what accounts for the difference in contacts between a nonprofit and government agencies with respect to fair housing, and if you could share thoughts about what may account for the difference in points of contact on what your Committee describes as a persistent concern in the state.

MR. REED: No, there was no particular conversation or discussion about the difference in the two.

One might conjecture that, given that Vermont Legal Aid has sort of a much broader contact with community, they would be the natural point for community members to go to, as a known entity.

CHAIR LHAMON: And so, that would underscore your point about the value of notice to tenants about their rights, as one of the recommendations that you have on the last page of the
CHAIR LHAMON: Thank you. Also, as you may know, the Commission is in the middle of an ongoing investigation about the effectiveness of federal civil rights enforcement across issue areas and agencies.

And so, obviously, one of the issues that we're investigating is fair housing and fair housing enforcement.

And I note very strong parallels between the information in your Committee's report and information that we took in from the HUD [Department of Housing and Urban Development] representative at our briefing about the challenge in addressing the volume of fair housing need in this country, with limited ability to investigate complaints and identify the scope of need.

And I wonder if you have thoughts about what it would take to be able to evaluate what actual circumstances are on the ground, in addition to the points of contact that people make with federal agencies, state agencies, and/or nonprofits.

MR. REED: There's -- in terms of improving service, it's really a function of to what extent is one able to be involved in the community, with the
community.

I think federal agencies have more constraints or may perceive they have more constraints, to get out, to visit and engage community groups in conversations about what the needs are in their particular communities, not only around housing, but in terms of law enforcement, in terms of education.

That local groups have a much greater capacity, I think, for going to where community members are and listening with a critical ear, that allows community members to say, let's go to the nonprofit or state agency, as opposed to a federal agency.

CHAIR LHAMON: Thank you. I have just one more question, and that is, at Page 4 of your report, you note that the Champlain area NAACP received 50 complaints regarding the availability of housing in the 11-month that proceeding your briefing, which was in 2015.

And I wonder if you had views about the reliability of the state's analysis of impediments submitted in 2017 not referring to those kinds of complaints, specifically to that NAACP or more generally, to complaints to other nonprofits related
to fair housing issues?

    Is that an oversight that is surprising to you or is that something that you would not consider an oversight at all?

    MR. REED: It's not surprising. But also, keep in mind that, when people go to the NAACP, they're typically going with not just one particular complaint, but also sort of multiple complaints, out of which NAACP is teasing out the data specific to housing.

    But that there are issues around discrimination in the workplace or the inability to get a job, education, and so, the -- places like the NAACP, whether it's in Champlain Valley or Rutland or in Southeastern Vermont, community members come in with a litany of issues.

    And it's difficult for, difficult but not necessarily impossible for, federal agencies just to narrow-in on the housing issue in and of itself. Because I think there's a tendency not to want to hear what the other sort of complaint areas are, that they just want you to focus on housing or education or workplace discrimination.

    But unfortunately, or maybe fortunately, the way community members' minds work is a much more
holistic fashion, in terms of the interconnectedness of these various forms of discrimination and harassment.

CHAIR LHAMON: Thank you very much, Chair Curtiss. Are there questions from other Commissioners? Hearing none, I will thank you very much and we can move on to our next item.

But first, thank you for your service and for your leadership on the Vermont State Advisory Committee and for the Advisory Memorandum that you shared with us today, and thank you again for presenting notwithstanding illness, we appreciate it.

MR. REED: Thank you to you as well.

COMMISSIONER NARASAKI: Madam Chair?

CHAIR LHAMON: Yes?

COMMISSIONER NARASAKI: Madam Chair, this is Commissioner Narasaki, I just wanted to let you know that I have joined before the Vermont Chair begin his report.

CHAIR LHAMON: Welcome, we're delighted to have you.

DISCUSSION AND VOTE ON THE DISCOVERY PLAN, OUTLINE, AND TIMELINE FOR THE COMMISSION'S PROJECT ON WOMEN IN PRISON

CHAIR LHAMON: So, our next item is a
discussion and vote on the discovery materials, namely the discovery plan, outline, and timeline for the Commission's project on women in prison. To begin discussion, is there a motion?

COMMISSIONER KLADNEY: I move we adopt the plan.

CHAIR LHAMON: Thank you. Is there a second?

COMMISSIONER ADEGBILE: Second.

VICE CHAIR TIMMONS-GOODSON: Madam Chair, I second.

CHAIR LHAMON: Terrific, thank you. Commissioner Kladney, as the sponsor of this project, would you begin our discussion?

COMMISSIONER KLADNEY: My office has been working closely with OCRE [Office of Civil Rights Evaluation] and we have developed -- they have developed this plan. And I feel it's very comprehensive. It's an issue-oriented briefing, the panels will be issue-oriented rather than group-oriented.

I think it's a pretty well rounded discovery plan. And recently, they have come up with a list of witnesses that I think are all-encompassing on the issue. And I urge adoption.
CHAIR LHAMON: Terrific, thank you. To continue our discussion, I'll offer a few points.

First, I am very grateful for the Office of Civil Rights Evaluation, the specific expertise that we get to benefit from for this project. And I also appreciate Commissioner Kladney leading this and the research that has come from your office as well, to move us forward.

I believe that you all together will lead us through this investigation with a solid foundation and I look forward to taking up this issue in more depth, with a briefing in February 2019.

So, any other discussion? Commissioner Heriot?

COMMISSIONER HERIOT: I just want to say, the side of this that interests me the most is the education side. I've spoken to Commissioner Kladney on this and I just want to make sure that we're going to be looking into what gets taught at various prisons.

I mean, it seems to me that the reason this is an interesting issue is that there are a lot more men in prison than there are women and that, therefore, there are economies of scale at men's prisons that you don't get in women's prisons.
And I would like to see as much data as we can get on that issue. And I'm wondering if Commissioner Kladney can talk about that for a second.

COMMISSIONER Kladney: Thank you, Commissioner Heriot, for your interest. I -- we have several witnesses who will speak to rehabilitation in those terms. You've accurately pointed to an issue that is a very lively issue in regards to women in prison.

They have -- they do not have -- my preliminary research, not to draw any conclusions early, my preliminary research has shown that, in fact, men do have more outlets in terms of rehabilitation and learning skills in prison.

While we were talking earlier, you had mentioned, I think, welding. And that has come up, electrics has come up, electrician training, plumbing, real construction type jobs. And my office's preliminary research has shown that they are not available to women.

And we plan to have witnesses, there will be witnesses at the briefing who can address that specifically. We will have one lady, Alex McLaren, who is BOP's [Bureau of Prisons] in charge of the women's facilities, who will --
COMMISSIONER HERIOT: The whole facilities or just the education?

COMMISSIONER KLADNEY: All facilities.

CHAIR LHAMON: And we'll just interrupt and note that we do not know who will actually speak at the briefing itself. We know who we might invite.

COMMISSIONER KLADNEY: Right.

CHAIR LHAMON: And we haven't voted on that yet.

COMMISSIONER KLADNEY: Let me put it this way, I believe she will be invited. And I firmly believe that she will probably attend. Although, I'm speculating, a woman of her stature would be able to address all those issues.

COMMISSIONER HERIOT: What I would like to see, if we can get this, is, like, have an appendix to the report that says, here are the courses that are offered at such-and-such a prison, here are the ones that are offered at another.

So that we really -- instead of just getting them off-the-cuff when we're asking them a question, like what gets taught. We won't get completely accurate information there.

I would like it if we could ask that witness to give us just the straight data on it, like
in the year 2018, which by then will be finished, what
got taught at, maybe not every federal prison, but if
we had a good sample of men's versus women's prisons.

COMMISSIONER KLADNEY: I will try to obtain
that. I think, because BOP, I don't know how many
women's facilities they have, but it's not many
throughout the country.

COMMISSIONER HERIOT: Yes, that's the basic
problem.

COMMISSIONER KLADNEY: And the other
problem --

COMMISSIONER HERIOT: And I think it speaks
well for women, by the way.

COMMISSIONER KLADNEY: Thank you very much,
yes, it does.

COMMISSIONER HERIOT: Though I could say
nice things about men, too. The one I can't say is
that they are less likely to commit a crime that will
cause them to go to prison.

COMMISSIONER KLADNEY: I am speechless.

Anyway --

CHAIR LHAMON: So, keeping us moving,
productively --

(Laughter.)

CHAIR LHAMON: -- I think it might be time
for us to call the question and take a roll call vote.

So, Commissioner Adegbile, have --

VICE CHAIR TIMMONS-GOODSON: Madam Chair?

CHAIR LHAMON: Oh, sorry, Madam Vice Chair, go ahead.

VICE CHAIR TIMMONS-GOODSON: Madam Chair?

Yes, I just wanted to thank Commissioner Kladney for his leadership on this. What appeals to me is the fact that this will come on, this report will come on the heels of our collateral consequences one.

And so, to some degree, it allows us to do a slightly different eye as we look at women in prison and collateral consequences. And so, I like that and good job thus far.

CHAIR LHAMON: Thank you. Okay. So, now, we'll turn to calling the question and taking a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I'll vote aye, on the ground that Commissioner Kladney is going to try to get that information that I just mentioned.

CHAIR LHAMON: Thank you.

COMMISSIONER HERIOT: But did I just vote aye on the timeline as well, is that part of the deal
here?

CHAIR LHAMON: Yes.

COMMISSIONER HERIOT: Or are we voting separately on that?

CHAIR LHAMON: I think Commissioner Kladney's motion was to approval all of the product materials, is that correct?

COMMISSIONER KLADNEY: Yes, it was.

COMMISSIONER HERIOT: Okay. I may have something to say about the timeline.

COMMISSIONER KLADNEY: Do you want to pause for discussion?

COMMISSIONER HERIOT: Yes. I'm just a little bit concerned about Section 4 here, which is kind of oddly numbered since the dates on Section 4 come after the dates on Section 3.

And it looks like we would be getting affected agency review incorporated the very same day that we are voting, which doesn't make sense to me. It may be that there will be no such changes, but if there are significant changes, I don't see how we could be voting on the project on the same day.

CHAIR LHAMON: I think the vote is actually, we disseminate the project for vote on that day, but the vote itself takes place on November 8.
So, it gets disseminated on October 25. And that's the day that the affected agency review.

COMMISSIONER HERIOT: Is there some way to move that affected agency review up? I mean, that strikes me as very late in the game.

CHAIR LHAMON: I'm sorry, also, just to be clear, the affected agency review comes in on October 18 and the responses to it are incorporated on October 25.

And then, as those responses are incorporated, they are submitted to the Commissioners for a vote. And the vote follows on November 8. So, we would receive the affected agency review October 18 and then, vote on November 8.

COMMISSIONER HERIOT: Okay. Well, that's good enough for me.

CHAIR LHAMON: Okay.

COMMISSIONER HERIOT: I am concerned, though, that an affected agency review can be a big deal.

CHAIR LHAMON: Yes, agreed.

COMMISSIONER HERIOT: And it can really, really change the report. And if this one does, I think we're going to have to put off the vote. But if it doesn't, then we're okay.
CHAIR LHAMON: Right. So, that's a bridge we can cross then --

COMMISSIONER HERIOT: Okay.

CHAIR LHAMON: -- but I appreciate your concern, yes.

COMMISSIONER HERIOT: Okay.

CHAIR LHAMON: Okay. So, turning back to a vote, as we had proceeded, let me just confirm --

COMMISSIONER HERIOT: Then, I'm still a yes.

CHAIR LHAMON: You're still a yes. And Commissioner Adegbile, did that discussion change your vote?

COMMISSIONER ADEGBILE: No.

(Laughter.)

CHAIR LHAMON: Okay. Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Thank you. Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Thank you. Commissioner Yaki?

Yaki?
COMMISSIONER YAKI: I'd like a vote on whether I can really understand anything that went on in the previous discussion on the previous vote, but I'll vote yes, anyway.

(Laughter.)

CHAIR LHAMON: I appreciate your informed vote, Commissioner Yaki. Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. So, the motion passes unanimously.

DISCUSSION AND VOTE ON THE BRIEFING DATE FOR THE COMMISSION PROJECT ON SEXUAL HARASSMENT IN FEDERAL WORKPLACES

CHAIR LHAMON: The next item is a discussion and vote on the briefing date for the Commission project on sexual harassment in federal workplaces. To begin discussion, is there a motion?

COMMISSIONER ADEGBILE: I'd like to move that we revisit the date of that report.

CHAIR LHAMON: Is there a second?

COMMISSIONER Kladney: I'll second that, Kladney.

VICE CHAIR TIMMONS-GOODSON: I second that, Vice Chair Timmons-Goodson.

COMMISSIONER HERIOT: Do we have a
COMMISSIONER ADEGBILE: Yes, I'll speak to it with great specificity. The motion is that we move the date from the presently scheduled May 17 to May 9.

CHAIR LHAMON: Okay. So, is there a second to that?

COMMISSIONER Kladney: Kladney, I'll second.

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

CHAIR LHAMON: Thank you. Any discussion?

COMMISSIONER ADEGBILE: Yes. I would just, before we vote, like to anticipatorily, thank the Commissioners and staff for considering this modification.

CHAIR LHAMON: Any further discussion?

COMMISSIONER NARASAKI: This is Commissioner Narasaki. I understand that this falls around Commissioner Yaki's anniversary and Commissioner Adegbele might want to send a card or something to his wife.

CHAIR LHAMON: Flowers, candy.

(Laughter.)

COMMISSIONER ADEGBILE: I'm happy to take on the responsibility for all of the above and I also
would like to --

COMMISSIONER YAKI: I just want to note that --

COMMISSIONER ADEGBILE: -- yield the floor to Commissioner Yaki.

COMMISSIONER YAKI: -- I think for the past ten years, I've endeavored to schedule this so it does not fall on that, and every single time, it gets changed. And the enduring patience of my wife is something to behold on this particular matter, since sometimes it fell on, like, key anniversary dates.

CHAIR LHAMON: The Commission is the gift that just keeps on giving.

(Laughter.)

COMMISSIONER ADEGBILE: And special thanks go to Commissioner Yaki, and I will pay penance to your wife.

COMMISSIONER YAKI: Thank you.

CHAIR LHAMON: So, unless there's any further discussion, I'll call the question and we can take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.
CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye, with extreme reservations.

(Laughter.)

CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes.

VICE CHAIR TIMMONS-GOODSON: And I'll report on the extreme reservations to Commissioner Yaki's wife.

(Laughter.)

CHAIR LHAMON: So, the motion passes unanimously again.

DISCUSSION AND VOTE ON EXTENSION OF THE STAND YOUR GROUND STATEMENT DEADLINES

CHAIR LHAMON: So, now, we'll take up our amended agenda items, beginning with the extension of the Stand Your Ground statement deadlines. To begin your discussion, is there a motion?
COMMISSIONER YAKI: Yes, this is Commissioner Yaki. I'd like to amend the deadlines so that the statements are due on January 11, 2019, rebuttals due on February 11, and surrebuttal notice due on February 18, text on February 25.

This has been worked and given the okay by Commissioners Heriot and Kirsanow and other members of the Commission, so I ask for this to be approved.

CHAIR LHAMON: Thank you. Is there a second?

COMMISSIONER KIRSANOW: Second.

COMMISSIONER NARASAKI: Commissioner Narasaki seconds.

CHAIR LHAMON: I think Commissioner Kirsanow beat you to the second. We'll take it, thank you. Unless there's further discussion, 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: Yes.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LHAMON: Commissioner Kladney?

COMMISSIONER KLABNEY: Yes.
CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes unanimously.

**DISCUSSION AND VOTE ON A LETTER TO HHS REGARDING REPORTED PLANS TO DEFINE GENDER**

CHAIR LHAMON: Now, we'll turn to our second amended agenda item, which is a discussion and vote on a letter to HHS [Department of Health and Human Services] regarding reported plans to define gender. To begin discussion, is there a motion?

COMMISSIONER NARASAKI: Yes, sorry, this is Commissioner Narasaki. I move that we adopt the letter to HHS concerning the definition of gender, and will be happy to read it at the appropriate time.

CHAIR LHAMON: Thank you. Is there a second?

COMMISSIONER ADEGBILE: Second.

CHAIR LHAMON: Thank you. To begin discussion, I'll begin with Commissioner Narasaki. Commissioner Narasaki, we would benefit from your
reading it, so we know what it is we're voting on.

COMMISSIONER NARASAKI: Yes. And staying with our tradition, I am not going to read the footnotes, so that we won't be here for days. It reads:

[Begin text] Dear Secretary Azar: The U.S. Commission on Civil Rights writes to urge the Department of Health and Human Services not to narrowly define gender to a biological, immutable condition determined at birth.

We are concerned that such a definition will have serious negative impacts on the health, welfare, and civil rights of members of the transgender community.

Defining federal protections barring discrimination on the basis of sex to exclude protections for transgender people runs counter to longstanding legal precedents and will leave transgender people vulnerable to unlawful discrimination.

Approximately 1.4 million Americans identify themselves as transgender and are widely recognized by the medical community as facing barriers to accessing high quality medical care.

The transgender community is a uniquely
vulnerable community and many of the Commission's recent investigations highlight the discrimination and significant health, social, and economic barriers they face.

For instance, in our report on workplace discrimination against the lesbian, gay, bisexual, and transgender, LGBT, community, we found that LGBT workers have faced a long serious and pervasive history of official and unofficial employment discrimination by both federal, state, and local governments and private employers.

Our research indicated workplace discrimination can drastically increase psychological stress and other mental health problems.

Many transgender workers report experiencing hostile work environments, where they are often mistreated, harassed, physically or sexually assaulted, forced to present as a gender they do not identify with, asked inappropriate questions, and deliberately taunted by the use of incorrect pronouns by their coworkers.

Our report also found many transgender individuals consider themselves underemployed because they are overqualified for their position. For example, transgendered people often report sex jobs
because of difficulties of being hired.

According to a 2011 report, transgender respondents who were unemployed have nearly double the rate of engaging in survival sex work, four times the rate of homeless, and 85 percent more incarceration compared to those who were employed.

In addition, they are disproportionately likely to be HIV-positive, use drugs, or drink heavily and have multiple suicide attempts.

Our most recent report on police practices also highlighted the trauma members of the transgender community experience because of disparate treatment and harassment from law enforcement.

Members of the transgender community reported frequent harassment by law enforcement. The report found that 59 percent of transgender respondents reported being stopped by police and being profiled as sex workers, when they were conducting routine daily tasks in the neighborhood.

Of these individuals stopped, 51 percent of all LGBT respondents and 61 percent of transgender respondents reported that they had been physically or verbally harassed. And some also reported sexual abuse by police officers, including being forced to perform sexual acts under threat of arrest.
A 2013 research study by the National Coalition of Anti-Violence Programs found that 48 percent of LGBT -- sorry, I'm trying to read this on my laptop -- hate crime survivors reported that they experienced police misconduct.

They found that transgender women were four times more likely to experience police violence compared to overall survivors. Transgender people overall were seven times more likely to experience physical violence when interacting with the police compared to cisgender survivors and victims.

As the Commission's research makes clear, it is critical that this community has the same level of access to healthcare and health services that all Americans have.

By adopting such a narrow definition of gender, the Department will effectively be erasing the identities of transgender people and endangering their access to healthcare that meets their unique needs.

Such a definition sends a message that the transgender community should not exist, fosters and encourages prejudice inconsistent with our core national values, and will have additional serious implications if adopted across other federal agencies.
Such a narrow definition would also be contrary to the good judgment of any federal court that has ruled on this very issue in interpreting federal civil rights laws and whose opinions are binding in their jurisdictions.

For instance, in a case challenging a transgender boy's exclusion from a boy's locker room, the U.S. Court of Appeals for the Seventh Circuit pointed out that Title IX does not use the term biological as a modifier for sex and went on to hold that the policy that requires an individual to use a bathroom that does not conform with his or her gender identity punishes that individual for his or her gender nonconformance, which in turn violates Title IX.

Similarly, the U.S. Court of Appeals for the Sixth Circuit rejected an employer's argument that Title VII's bar on sex discrimination was limited to biological sex and held that discrimination on the basis of transgender and transitioning violates Title VII.

The Commission calls on the Department of Health and Human Services to reject any plans it may have to narrowly define gender and to work to ensure civil rights of members of the transgender community.
are protected.

We request the opportunity to meet with you or your staff at your earliest convenience to discuss this urgent issue. We look forward to your response. Sincerely. [End text]

CHAIR LHAMON: Thank you, Commissioner Narasaki. I noted as you were reading one friendly amendment I'd like to offer, which is that in Paragraph 1, in the third sentence, it begins, defining federal protections barring discrimination of, if we could change that “of” to “on,” I think it would just be more grammatically correct.

COMMISSIONER NARASAKI: I'm happy to accept the friendly amendment.

CHAIR LHAMON: Thank you. Any further discussion? Commissioner Heriot?

COMMISSIONER HERIOT: One concern I have is that this is very premature. There is not yet a policy out there.

But another clarification here is that, your Footnote 1 refers to a New York Times article that claims that such a policy is forthcoming. And in that second line there, you say that the Department of Health and Human Services is going to define gender.

Well, gender is not a statutory term in
most of these statutes. The term that, if the article
is correct, it quotes from a memo that talks about
defining sex, not defining gender.

And sex is indeed a statutory term and,
hence, it wouldn't be terribly surprising if there's a
memo out there that does indeed attempt to define sex
within the meaning of those statutes.

But the notion that they're defining
gender, I don't know why they would be defining
gender. And so, the first thing I think we need to do
is make sure that there is such a memo and what it
says.

But I'd just be shocked if there's a memo
out there that defines gender, given that sex is
actually the term that's in the statute and, hence,
sex is the term that presumably needs defining. So, I
think that's a fundamental error in the letter as it's
presented right now.

Also, I think that, from the standpoint of
the progressive agenda, you're shooting yourself in
the foot. If you're going to define sex in a way
that's more in keeping with how we use the term gender
these days, then you're going to eliminate the
discriminatory aspects of it.

I mean, under Price Waterhouse, you can
make an argument, it's been rejected by some courts, but you can make an argument that if you have an anatomical male who prefers feminine dress, feminine hairstyles, and such, and therefore says, gender is female, you can make the argument that if an employer rejects an anatomical male that adopts feminine dress and hairstyle, but not an anatomical female, that there's sex discrimination.

But once you start getting clever with the definition of sex, you make it so the arguments under Price Waterhouse can't be made.

COMMISSIONER NARASAKI: Well, addressing your first point, which I gather that you feel that it's premature, we're actually trying to prevent them from moving forward and not waiting for them to actually do it and complain later.

CHAIR LHAMON: I will say, to add to that response, Commissioner Narasaki, I fully support this letter and am planning to vote in its favor. I think it's important for us to speak to the issues.

And I also just want to confirm for the record that I am not here to advance a progressive agenda, I am here to advance the statutory and regulatory protections for civil rights that exist today and to help advise Congress, the President, and
the American public about what would be effective additional civil rights policy and that is my one and only agenda and my position here.

Any further discussion of the statement?

Okay. I will then call the question and take a 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: 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 Commissioner abstained, all others were in favor.

DISCUSSION AND VOTE ON A LETTER TO DHS AS A COMMENT ON THE PROPOSED PUBLIC CHARGE RULE

CHAIR LHAMON: We'll now turn to another
amended agenda item, which is the discussion and vote on a letter to DHS [Department of Homeland Security] as a comment on the proposed public charge rule. To begin discussion, is there a motion?

COMMISSIONER NARASAKI: Yes, this is Commissioner Narasaki. I move that the Commission file a response to the proposed rule to significantly change the public charge rules as they pertain to immigrants.

CHAIR LHAMON: Thank you. Is there a second?

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

CHAIR LHAMON: Thank you, Madam Vice Chair. Commissioner Narasaki, will you begin our discussion?

COMMISSIONER NARASAKI: I will --

CHAIR LHAMON: I'm sorry, I was just going to recommend that we not read all seven pages of the proposed letter into this record, just because of the length of time. But I do defer to you and how you want to move us.

COMMISSIONER NARASAKI: Yes, that was how I was going to begin.

(Laughter.)

COMMISSIONER NARASAKI: Since this is a
filing in opposition to a notice of proposed rulemaking, I will -- and it's a very lengthy piece, I don't think it's helpful to read it.

All of the Commissioners received a draft of it from my Special Assistant, Jason Lagria. I'd like to thank him and the other Special Assistants who have helped work on it.

This is an issue that I have been working on for, I think pretty much the 25 years that I have been in Washington. And what the USCIS [U.S. Citizenship and Immigration Services] is proposing to do is to make it even more difficult for immigrants to reunite with their family members.

There is a requirement in the law that, when looking at people applying for admission, that they not be someone who would immediately need cash assistance.

And that has been how it has largely been defined for a quarter of a century now, almost, and will vastly -- would expand on a prospective basis, what that means.

It has been on the totality of circumstances, which are rather -- raises the concern that that opens up the ability for there to be discrimination in its application.
And also, start to do something that some people have been trying to do in efforts to change the immigration laws and that is to introduce by the backdoor requirement of some English fluency before people would be able to enter.

We also think that it puts at risk people whose circumstances may change after they come here, they have to come here and do dangerous work, and may get injured along the way.

They often have citizen children who then would not be able to receive assistance and who would be growing up without the necessary resources to make sure that they can eventually become fully effective and contributing adults.

So, I will stop there and see if there are any questions.

CHAIR LHAMON: Commissioner Narasaki, this is the Chair. I want to thank you for exercising your leadership to move us in this direction, to use the expertise of the Commission in submitting public comments for a proposed regulatory rule.

I think that it is an important way to use the voice of the Commission and the expertise of the members of the Commission and I appreciate your leadership.
In that respect, with this as a device, and also on this very important issue, I plan to vote in favor of the draft that you shared.

COMMISSIONER NARASAKI: I appreciate that. And actually the challenge is that because this law would fall disproportionately on different people of different national origins that would be discriminatory.

CHAIR LHAMON: Thank you. Any other discussion on this motion. Hearing none, I will call the question and take a 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: 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 Commissioner abstained, all others were in favor.

DISCUSSION AND VOTE ON A STATEMENT REGARDING THE COMMISSION'S LEGISLATIVE AND OVERSIGHT PRIORITIES FOR THE NEW CONGRESS

CHAIR LHAMON: We'll now turn to another amended agenda item, which is a discussion and vote on a statement regarding the Commission's legislative and oversight priorities for the new Congress, as circulated earlier this week.

To open the floor for discussion, I move for approval of the statement as circulated by my Special Assistant. Is there a second?

COMMISSIONER KLADNEY: Kladney, I'll second.

COMMISSIONER NARASAKI: I second, Commissioner Narasaki.

CHAIR LHAMON: Thank you. I'll begin with a discussion of a few points, and I will, I think, depart from our tradition of reading it into the record, because it is also quite long, it is five pages, unless anyone particularly wants to hear the melodious tone of my voice at that length.

COMMISSIONER HERIOT: Let me think about
that. No.

(Laughter.)

CHAIR LHAMON: Fair enough. So, let me just describe the goals of this draft that I know we have all seen. And that is Congress's mandate to the Commission is to advise the President, Congress, and the public on civil rights policy and the state of civil rights enforcement.

With the new Congress coming in in January of 2019, and given the volume of work and the important issues always facing Congress, I think it's prudent to provide a priority list from the Commission to highlight key recommendations resulting from the Commission's focused attention and research over the last few years.

The urgent message that we would send to Congress with this statement is that Americans need our members of Congress to prioritize civil rights with their oversight investigations and new legislation.

With that, I'll pause and see if there's any further discussion on the statement. Hearing none --

COMMISSIONER NARASAKI: This is Commissioner Narasaki.
CHAIR LHAMON: Go ahead, Commissioner Narasaki.

COMMISSIONER NARASAKI: I want to applaud the Chair and her Special Assistant for their hard work on this letter.

I think it is very appropriate, with new Congress coming in and with so many new members, to educate Congress, as is our mission, about the concerns and recommendations that the Commission has been raising recently, and look forward to supporting this in my vote.

CHAIR LHAMON: Thank you. If no further discussion, I will call the question and take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: I vote aye, however, I would like to note on the letter that I take no position with respect to the recommendation regarding consent decrees and I would appreciate it if the letter would so reflect.

CHAIR LHAMON: Thank you. Commissioner Heriot, how do you vote?

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: 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 Commissioner abstained, and all others were in favor, with the note to be added that Commissioner Adegbile raised.

DISCUSSION AND VOTE ON THE STATEMENT REGARDING CITIZENSHIP

CHAIR LHAMON: We now turn to another amended agenda item, which is a discussion and vote on the statement regarding citizenship. To begin discussion, is there a motion?

COMMISSIONER NARASAKI: Yes, this is Commissioner Narasaki. I move that we adopt a statement, U.S. Commission on Civil Rights warns against attempts to end citizenship continued hostility to immigrants.

CHAIR LHAMON: Thank you. Is there a second?

COMMISSIONER ADEGBILE: I will second.
COMMISSIONER YAKI: Second by Commissioner Yaki.

CHAIR LHAMON: Okay, thank you. To begin discussion, we'll start with Commissioner Narasaki.

COMMISSIONER NARASAKI: Yes. This is fairly brief and so, I will go ahead and read it.

CHAIR LHAMON: Thank you.

COMMISSIONER NARASAKI: The U.S. Commission on Civil Rights strongly opposes the President's announced intention to attempt to end citizenship for children born in the United States to non-citizens through Executive Order.

The President's proposal continues a troubling pattern of statements expressing hostility and animus toward immigrants or their nations of origin that this Commission has previously noted.

This attempt is just the latest manifestation of policies such as the Muslim Ban and the proposed expansion of public charge termination to curtain immigration from marginalized communities that threaten the dignity, well-being, and civil rights of immigrants and citizens in our country.

Attempts to end citizenship for children born in the United States would clearly violate the plain text of the 14th Amendment, which states: all
persons born or naturalized in the United States and
subject to the jurisdiction thereof are citizens of
the United States.

The Supreme Court has been clear on this
subject. In 1898, the Supreme Court held, in United
States v. Wong Kim Ark, that a child born in the
United States to Chinese nationals who then were
barred from becoming naturalized U.S. citizens was
entitled to citizenship under the 14th Amendment.

In 1982, all nine Supreme Court Justices
agreed in Plyler v. Doe that the equal protection
clause applies to undocumented immigrants physically
within the jurisdiction of state no less than it does
to documented immigrants and U.S. citizens, because
they are subject to the jurisdiction of the United
States.

Others across the ideological spectrum
have also pointed out that the original intent of the
drafters of the 14th Amendment was for the amendment
to be broad and sweeping with very limited exceptions.

More than 13 countries offer similar
birthright citizenship.

The President's proposal is a violation of
the civil rights and equal protection of native-born
children of non-citizens that diminishes the rule of
law in our country.

We strongly advise the President to reconsider and publicly disavow any further effort to end such citizenship. [End text]

CHAIR LHAMON: Thank you, Commissioner Narasaki. Is there any discussion of this proposed statement? Commissioner Heriot?

COMMISSIONER HERIOT: I suspect that Commissioner Narasaki is correct about the interpretation of the 14th Amendment here, but that's alas just a suspicion on my part. The text, I think, seems to go with her.

I have not read the argument in the other direction yet. And I feel like I can't weigh in on anything other than my gut reaction, as the text is with Commissioner Narasaki and the text matters a whole lot.

So, I'm going to have to abstain on this one. Even if I'd read Professor Eastman's argument to the contrary, at this point, and formed a firm opinion that Commissioner Narasaki is correct, the rhetoric in this particular document is not something that I could support.

But the basic notion of what the 14th Amendment requires, again, I think she's probably
right, but I can't say that definitively until I've read the argument going the other way.

CHAIR LHAMON: That's fair, thank you.

COMMISSIONER NARASAKI: I'll take a probably right from you, Commissioner Heriot.

COMMISSIONER HERIOT: Yes, well, maybe at some other point, I'll have a final opinion, but right now, I just have to abstain.

CHAIR LHAMON: Thank you. Commissioner Adegbile?

COMMISSIONER ADEGBILE: Madam Chair, I want to pick up on a point made by Commissioner Heriot. There is a sense in which the animating events for this statement are in part about rhetoric.

They're about the rhetoric of our nation's leader, who has chosen a path of demonizing human beings on a categorical basis who hail from various parts of the globe on the strength of their national origin, their religion, rather than pursuing a path of using the bully pulpit to take exception and note where the policies or leadership vision of foreign leaders is inconsistent with American interests.

So, rhetoric is important in public policy. But it's important to have leaders who don't engage in categorical demonization of people on the
strength of where they were born, what the circumstances of their birth are, or their religion. And so, I would like to note that this statement is important, because it doesn't stop with rhetoric.

Rhetoric can sometimes form the basis for policies and those policies can have effects when joined with the dangerous rhetoric that is inconsistent with the American idea, with our history, and with our finest traditions.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thanks, Madam Chair. I would largely concur with what Commissioner Heriot had just stated, although I would note that I think it probably behooves everyone to engage in a bit of humility as to whether or not the 14th Amendment applies to this situation.

I do think that, first of all, at the time the 14th Amendment was promulgated, no one contemplated this particular issue.

But to the extent there was any discussion about it, two of the principal drafters of it, Lyman Turnbull and Jacob Howard, suggested that it wouldn't apply as this statement would have it apply. That is, it would not apply to the children of illegal
immigrants born in America.

But I would say that it's a close reading.

If you look at the text, I would think the clear reading of the text would say, most likely, individuals born in the United States, regardless of circumstance, are entitled to citizenship.

But beyond that, this document isn't correct, in terms of its description of Wong Kim Ark or of Plyler.

In Wong Kim Ark, the distinguishing feature there is, even though these were Chinese nationals, they were lawfully present in the United States.

Second, with respect to Plyler v. Doe, that was a narrow reading, that was a very narrow case.

This suggests that somehow Plyler v. Doe says that illegal immigrants born in the United States are then entitled to citizenship, or the children of illegal immigrants born in the United States are entitled to citizenship.

And if you look at Plyler v. Doe, there are a number of statements by the various justices there that indicate that although individuals present in the United States are subject to the equal
protection of the law, that doesn't mean that a
category of citizens or all categories of individuals
are treated identically. There may be classifications
of individuals treated differently for a host of
reasons.

So, for that and other reasons, I will be
voting against this.

CHAIR LHAMON: It would be a substantial
difference in treatment to say that you could not be a
citizen, as a category.

So, I do just want to point out that a
strict textualist reading of all persons born or
naturalized in the United States does suggest that,
unless these children are not persons, they are
citizens under that amendment.

Commissioner Narasaki?

COMMISSIONER NARASAKI: I just wanted to
note that we are using Plyler v. Doe for the finding
that children, undocumented children, or children who
are born here, are subject to the jurisdiction.

CHAIR LHAMON: Commissioner Narasaki, I
noted --

COMMISSIONER YAKI: Madam Chair?

CHAIR LHAMON: I'm sorry, go ahead,
Commissioner Yaki.
COMMISSIONER YAKI: I just wanted to make a brief statement. The cases, civil rights cases of the late 1800s, early 1900s, were brought by members of the Chinese American community at the time, a community that had been the subject of distinct and overtly racist laws designed to prevent them from entering the country, owning property, really having the full rights that every American or every person who was in this country should be allowed.

And part of my pride in being half Chinese American is knowing that these are individuals who decided to challenge the interpretation of a law brought down against them by a power structure that was white and male, just to be factual about it, and went to a Supreme Court that was also white and male, and found these rights to be self-evident in the plain wording of the 14th Amendment.

They pooled their money together, they worked together as a community to fund these legal challenges. This was not something that they took lightly, given their status and the fear of retribution for them.

And we have to remember that and remember what it is that they did for every American who is here now, for every immigrant family, for everyone who
came through Ellis Island or Angel Island, their children became American.

And the idea that one set of people or sets of people, whether it is by faith or by the color of their skin, somehow are not eligible to receive the same types of benefits that millions of others who are now second and third generation Americans is ridiculous.

And the rhetoric of a President, as Commissioner Adegbile said, means something, especially when it means changing the very nature of how we are defined and who we've seen ourselves and who we've become as Americans.

And so, I strongly support this statement.

I would have put perhaps even more inflammatory language that would have made Commissioner Heriot or Commissioner Kirsanow even more on edge. I did not.

But I would say that, this is -- Wong Kim Ark, Yick Wo, others are things that should be taught in every history book about this Constitution and its Amendments were meant to protect and bestow rights upon every person in this country and not just for a select few.

CHAIR LHAMON: Thank you, Commissioner Yaki. Commissioner Narasaki, I noted when you read
the statement, I think you added “such” before “citizenship” in the last line, and I liked that amendment and so, want to offer it as a friendly amendment to the text, if you would be willing to accept it.

So, the last sentence of the statement would read, we strongly advise the President to reconsider and publicly disavow any further efforts to end such citizenship.

COMMISSIONER NARASAKI: Yes, I would accept that amendment. And I'm a little worried about the title, because it seemed a little bit overwrought in the way we phrased it, that somehow the effort to end all citizenship is happening.

I was trying to avoid the use of the term birthright citizenship, but I would add it there, just for clarity, so we don't cause a huge panic.

CHAIR LHAMON: Okay. So, unless there's further discussion, with those two amendments, I will call the question and take a roll call vote. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Thank you. Commissioner Heriot?

COMMISSIONER HERIOT: Abstain.
CHAIR LHAMON: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Commissioner Kladney?
COMMISSIONER KLANDAY: Yes.

CHAIR LHAMON: Commissioner Narasaki?
COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Commissioner Yaki?
COMMISSIONER YAKI: Aye.

CHAIR LHAMON: Vice Chair Timmons-Goodson?
VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes, one Commissioner opposed, one Commissioner abstained, and all others were in favor.

STAFF DIRECTOR'S REPORT

CHAIR LHAMON: Next, we'll hear from Staff Director Mauro Morales for the monthly Staff Director's Report.

STAFF DIRECTOR MORALES: Thank you, Madam Chair. I don't have anything more to add than what is already contained in the report.

I always remain available to discuss any questions or concerns a Commissioner may have about the report or anything else that the Commission is working on.

I'd just like to say, since this is the
last business meeting of the year, I want to extend
good wishes to Commissioners, Special Assistants, and
all our staff for a wonderful job they did in 2018.
And I want to also wish everybody a wonderful holiday
and a safe one as well. So, thank you, Madam Chair.

III. ADJOURN MEETING

CHAIR LHAMON: Thank you. If there's
nothing further, I will hereby adjourn our meeting at
11:24 a.m. Eastern Time. Thank you.

(Whereupon, the above-entitled matter went
off the record at 11:24 a.m.)