

## U.S. COMMISSION ON CIVIL RIGHTS

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## TELEPHONIC BUSINESS MEETING

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FRIDAY, FEBRUARY 28, 2020

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

PRESENT:

CATHERINE E. LHAMON, Chair

DEBO P. ADEGBILE, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

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STAFF PRESENT:

NICK BAIR

KATHERINE CULLITON-GONZALEZ

PAMELA DUNSTON, Chief ASCD

ALFREDA GREENE

DAVID MUSSATT, RPCU

PILAR VELASQUEZ McLAUGHLIN

WARREN ORR

MICHELE YORKMAN-RAMEY

COMMISSIONER ASSISTANTS PRESENT:

ALEC DUELL

CARISSA MULDER

AMY ROYCE

RUKKU SINGLA

ALISON SOMIN

IRENA VIDULOVIC

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1 P R O C E E D I N G S

2 (10:02 a.m.)

3 CHAIR LHAMON: This meeting of the U.S.  
4 Commission on Civil Rights comes to order. It's  
5 10:02 a.m. Eastern Time on February 28, 2020. The  
6 meeting takes place over the phone.

7 I'm Chair Catherine Lhamon. I'd like  
8 to confirm that each of the Commissioners is on the  
9 line, so I'll take a roll call vote here at the  
10 outset. Please say present when I say your name.

11 Commissioner Adegbile?

12 COMMISSIONER ADEGBILE: Present.

13 CHAIR LHAMON: Thank you. Commissioner  
14 Heriot? Commissioner Kirsanow?

15 COMMISSIONER KIRSANOW: Here.

16 CHAIR LHAMON: Thank you. Commissioner  
17 Kladney? Commissioner Kladney, if you're speaking,  
18 you're on mute.

19 COMMISSIONER KLADNEY: Yes, it is. Can  
20 you hear me?

21 CHAIR LHAMON: Yes, thank you.  
22 Commissioner Yaki?

23 COMMISSIONER YAKI: I am here.

24 CHAIR LHAMON: Thank you. Based on  
25 that, a quorum of the Commissioners is present. Is

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1 the court reporter present?

2 THE COURT REPORTER: Yes, Madam Chair.  
3 I'm here.

4 CHAIR LHAMON: Thank you. Is the staff  
5 director present?

6 STAFF DIRECTOR MORALES: I am present.

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

9 **I. APPROVAL OF AGENDA**

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

12 COMMISSIONER YAKI: So moved.  
13 Commissioner Yaki.

14 CHAIR LHAMON: Thank you.

15 COMMISSIONER ADEGBILE: Second.

16 CHAIR LHAMON: Is there a second?

17 COMMISSIONER ADEGBILE: Adegbile.

18 CHAIR LHAMON: Thank you. I'll begin  
19 the call for amendments with two of my own. I move  
20 to amend the agenda to add a presentation by our  
21 Tennessee Advisory Committee Chair and to add  
22 consideration of public comment in response to the  
23 federal housing -- HUD's proposed regulation on  
24 affirmatively furthering fair housing. Do I have a  
25 second?

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1 COMMISSIONER YAKI: Second.  
2 Commissioner Yaki.

3 CHAIR LHAMON: Thank you. If there are  
4 no further amendments, let's vote to approve the  
5 agenda as amended. All those in favor, say aye.

6 (Chorus of aye.)

7 CHAIR LHAMON: Any opposed?

8 (No audible response.)

9 CHAIR LHAMON: Any abstentions?

10 (No audible response.)

11 CHAIR LHAMON: The motion passes  
12 unanimously.

## 13 II. BUSINESS MEETING

### 14 PRESENTATION BY TENNESSEE SAC CHAIR

15 CHAIR LHAMON: We'll hear first from  
16 our Tennessee Advisory Committee Chair Diane Di  
17 Ianni on the Committee's report titled Legal  
18 Financial Obligations in the Tennessee Criminal  
19 Justice System. Ms. Di Ianni, welcome.

20 MS. DI IANNI: Thank you. I'm Diane Di  
21 Ianni, Chair of the Tennessee SAC. And thank you  
22 for the opportunity to present our most recent  
23 report on LFOs or penal debt in Tennessee.

24 I understand that you all have our  
25 report and have had an opportunity to review it.

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1 So I will just very briefly outline our process and  
2 then bullet just a few findings and recommendations  
3 and leave time for any questions you might have and  
4 hope that I can answer them.

5 First, we decided to do this project in  
6 2018 after the U.S. DOJ had issued its dear  
7 colleague letter following the post-Ferguson  
8 analysis.

9 We also here in Tennessee were able to  
10 find quickly a 2017 report by our Tennessee  
11 Advisory Commission on Intergovernmental Relations  
12 which had done a kind of deep dive, again, just the  
13 year before in the unchecked growth of fees and  
14 taxes and surcharges kind of peppered throughout,  
15 scattered throughout our Tennessee laws. And we  
16 knew that would be a good resource to get us kind  
17 of a basic understanding of what the code is doing.

18 Third, we had a new governor who had  
19 expressed a real interest in rehabilitating  
20 formerly incarcerated individuals.

21 And lastly, just our Tennessee SAC  
22 which I'll emphasize is highly diverse and broad.  
23 We're a group of broadly differing political view  
24 and affinities but had a strong interest, all of us  
25 together, and a consensus, a strong interest in

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1 looking at this question of state policies and  
2 penal debt.

3 Our process was a little bit different  
4 than the prior report we had done in civil asset  
5 forfeiture. And this time we held our hearing in  
6 March 2019, a public hearing. And we had the  
7 advocates, academic, legislatures, and executive  
8 branch officials.

9 But what we really cared very much  
10 about and we did as a group kind of identified and  
11 were able to get individuals who themselves were  
12 formerly incarcerated and had kind of lived the  
13 experience of coming out and in some cases just  
14 folks in the criminal justice system who weren't  
15 even found guilty, incarcerated but came out with  
16 pre-trial debt and so forth.

17 But to really hear firsthand  
18 experiences, to understand what was happening with  
19 this, the daylong hearing in downtown Nashville was  
20 so compelling. We were so moved as a group, as a  
21 SAC by what we heard that we really wanted to get  
22 out a writing on the testimony we were hearing and  
23 kind of from the voices of the formerly  
24 incarcerated.

25 And we did that and we issued in May,

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1 so just a few months later, a preliminary -- what  
2 we call the preliminary memo on the issue in May.  
3 And I think you all have that as well. And there  
4 again, it was really just a summary of the  
5 testimony we heard because we thought it was that  
6 important to begin to circulate that.

7 Then in November 29, we put together  
8 our full report with recommendations which you also  
9 have. It was released early just in January last  
10 month and just at the start -- happily at the start  
11 of our legislative session.

12 So that was the process. And just to  
13 bullet very briefly our findings and  
14 recommendations, and then we can maybe turn to  
15 questions.

16 Our primary overarching key finding is  
17 that the use of penal debt to fund our court and  
18 justice systems here in Tennessee directly  
19 contradicts our state policy of promoting  
20 successful reentry of formerly incarcerated  
21 individuals, to reduce recidivism, increase public  
22 safety, and increase the health and well-being of  
23 our communities. And it contradicts our policy to  
24 ensure fair and equitable administration of justice  
25 in our state.

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1           We took that kind of key finding, then  
2 broke down in our report. As you see, it's kind of  
3 two parts, one focusing on the ways in which penal  
4 debt undermines successful reentry for the  
5 individual and then secondarily the  
6 disproportionate ways in which there's a  
7 disproportionate impact on women, the poor, and  
8 communities of color. And again, if you have  
9 questions, we can drill down a little bit on that.

10           Our recommendation, we have, as you  
11 see, one general overarching recommendation. Use  
12 of LFO here in the state is so intricately kind of  
13 interspersed throughout our code, our state laws,  
14 and our state and local budgeting kind of  
15 framework.

16           That said, I will say our Tennessee  
17 SAC, this diverse groups of folks, they cover the  
18 entire political spectrum. But there was this hard  
19 consensus that this practice just has to end. That  
20 it is absolutely counterproductive to the goals of  
21 our policy.

22           So understanding that, the idea, our  
23 first recommendation for Tennessee to move away  
24 from this funding model and end the practice of  
25 LFO, realizing, of course, that that's long term

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1 and would take structural changes over time.

2 The group -- the SAC very much wanted  
3 to also focus in a little bit more and in the  
4 alternative to the extent that that change doesn't  
5 occur in the near term. We really wanted to focus  
6 on the alternative, to have attention to evaluating  
7 the role of local counties and judges in  
8 establishing -- local jurisdictions in establishing  
9 new fees and then judges assessing them.

10 Here, our concern is really this  
11 concept, this legal framework allows for all kinds  
12 of concerning risk of conflicts of interest where  
13 you can have basically local jurisdictions deciding  
14 to just go to LFOs as a way of raising revenue for  
15 their local fund. And, for instance, courts can  
16 assess and some of the funds raised can go to  
17 enhance judicial salaries for elected officials.

18 So we thought that the conflict of  
19 interest concerns were very real and immediate and  
20 created potential risks of malincentive. And then  
21 so that, we really wanted to focus our  
22 recommendations on looking at that piece of it,  
23 thinking about moving to a state model where  
24 there's more monitoring where the use of these  
25 funds can be required to be reported and understood

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1 what's happening.

2 And then we also looked at more  
3 discrete policy reforms with respect to voting  
4 rights here in Tennessee. If you currently have  
5 outstanding LFOs, you cannot be restored -- have  
6 your voting rights restored, although we can talk  
7 about that if you have questions. There is a bill  
8 on that. We talked about we recommended there be  
9 ability to pay uniform analysis and a right to  
10 counsel with respect to LFOs.

11 And then finally, our recommendation  
12 was to establish a statewide value to the body to  
13 try to bring some kind of data driven policymaking  
14 here that they would look at, report, data collect  
15 on any new proposals for new fees.

16 To see how they're being used, and to  
17 create oversight for monitoring, kind of private  
18 debt collectors and so forth that from what we  
19 heard at the hearing can really put pressure on  
20 folks threatening that if they don't do this, they  
21 don't do that, if they don't make the payment,  
22 they'll be pulled right back into jail. So  
23 creating a lot of stress and making nonproductive  
24 effects.

25 So those are generally our findings and

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1 recommendations. And I'd be happy to drill down on  
2 any of this or talk about our post-report activity  
3 as you wish.

4 CHAIR LHAMON: Thank you so much, Chair  
5 Di Ianni.

6 CHAIR LHAMON: I'll open for questions  
7 from fellow Commissioners.

8 OPERATOR: If you would like to ask a  
9 question, please do.

10 COMMISSIONER KLADNEY: Madam Chair.

11 CHAIR LHAMON: Go ahead, Commissioner  
12 Kladney.

13 COMMISSIONER KLADNEY: Madam Chair.

14 CHAIR LHAMON: Go ahead.

15 COMMISSIONER KLADNEY: I'd really like  
16 to -- first of all, I'd like to thank you and the  
17 State Advisory Committee for the work you've done  
18 on this. I found the recommendation about sending  
19 the fines and fees to the general fund very  
20 relevant. I know they do that in my state. In  
21 Nevada, they do not. They keep it in the  
22 jurisdiction, and the court is obviously a  
23 moneymaker for the government.

24 Is there any recommendation on how that  
25 money should be divided or is it left to the

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1 legislature? And are you then going to allow the  
2 legislature to set the salaries for the local  
3 municipal judges or the justice court judges? Or  
4 that's still going to be left in the hands of the  
5 cities and counties?

6 MS. DI IANNI: Well, that -- yeah, I  
7 mean, that's a good question. I think the feeling  
8 and from the testimony that we heard, whether we  
9 can get -- I think we agreed as a SAC looking at  
10 this question, you're never going to get  
11 variability out of the system that all of the  
12 places of discretion that we have, whether -- not  
13 only whether the local jurisdiction assesses it,  
14 but whether it establishes a fine or fee and that  
15 goes into their own local revenue fund.

16 But whether judges -- how judges decide  
17 whether someone is indigent, whether to waive  
18 fines, fees, and taxes and so forth. That varies  
19 greatly across courts, within courts, across  
20 judges, urban versus rural, across this state.

21 And then sadly what we don't know is  
22 there's really a lack of any kind of demographic  
23 information to understand what is happening at the  
24 local level. So I think that's a very good  
25 question. I don't know that we as a SAC drilled

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1 down to that level of specificity with respect to  
2 our recommendation.

3 What I think was an overwhelming  
4 consensus was that as it stands, there's really  
5 insufficient accountability and monitoring and even  
6 foundational data to understand who is being  
7 assessed demographically, geographically, where  
8 there's a lack of consistency, a lack of process or  
9 uniformity about establishing indigency and so  
10 forth that we felt it -- essentially, really what  
11 we're saying is it has to kind of go up and there  
12 has to be more oversight.

13 And I think the SAC would feel that if  
14 the state -- if it all went into the general fund -  
15 - state general fund and then got allocated out or  
16 kind of funding in models or what county courts are  
17 going to have, what sheriff's -- ranges or  
18 something. There could be a more centralized view  
19 to ensure equity across the state, our three Grand  
20 Divisions in Tennessee.

21 COMMISSIONER KLADNEY: Thank you.  
22 Thank you very much.

23 (Simultaneous speaking.)

24 CHAIR LHAMON: Go ahead, sorry.

25 MS. DI IANNI: No, I just was going to

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1 say and we're very -- I don't want to take your  
2 time. But we did -- we've been very pleased with  
3 some post-report activities that we did. If you  
4 can indulge me just a bit.

5 We did a press release. We got print  
6 and radio coverage on it, both in English and  
7 Spanish. We did courtesy hard copies to key  
8 legislatures to drop off. We had a radio interview  
9 which was picked up -- upon this subject which was  
10 picked up both in an NPR affiliate station in  
11 Memphis and then later a national station picked it  
12 up and did some radio segment on the issue.

13 We have members who kind of got it out  
14 through social media and heard that an advocacy  
15 group has picked up a report and are going to be  
16 using it for their own action alert. We had a  
17 criminal justice reporter very interested in the  
18 issue, and we were able to put some of our  
19 panelists, folks who had been formerly  
20 incarcerated, could kind of connect them with the  
21 reporter who was working on a deeper diver into the  
22 issue to bring more attention to it.

23 And we have an op-ed. As a SAC, we did  
24 an op-ed that our statewide paper, The Tennessean,  
25 not only did they publish it but the editor or

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1 opinion editor did a beautiful job. He actually  
2 clipped our governor's recent State of State  
3 regarding the need for criminal justice reform and  
4 supporting returning individuals took that clip  
5 from this and put it right at the top of the online  
6 opinion piece.

7 He embedded other related articles. So  
8 it was very -- he attached it to a deeper diver for  
9 people to educate themselves. So from an op-ed, it  
10 was a highly -- he really enhanced the way, and I  
11 think the depth with which the community at large  
12 here in Tennessee can really kind of drill down and  
13 begin to understand this very important issue and  
14 the need for reform. So we are very pleased about  
15 that.

16 CHAIR LHAMON: Diane, thank you so much  
17 for letting us know that and also for the energy of  
18 the Advisory Committee on this topic. I wanted to  
19 say at least a couple things.

20 One is, this was very exciting, I heard  
21 in your recitation of the report that you had a  
22 hard consensus among the -- and I want to note that  
23 hard consensus resulted in unanimity in support of  
24 the report which is terrific to see. And then the  
25 report itself is quite comprehensive and really

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1 well done. So I want to thank you for the careful,  
2 thorough analysis of the issue.

3 I was very struck -- in the report, I  
4 think it's at page 5 -- that in Tennessee, fines,  
5 fees, surcharges, taxes can be assessed against  
6 people even when they ultimately are not convicted  
7 of an offense. So for the pleasure of being a part  
8 of the criminal justice process, people in  
9 Tennessee can be required to pay these fines and  
10 fees and charges. That was jaw dropping for me.  
11 So thank you for bringing attention to that scope  
12 of the issue as well.

13 MS. DI IANNI: Yeah. Well, good.  
14 Well, thank all of you for the opportunity. I will  
15 say as we really looked at this and looked at what  
16 kind of existed, although we have this great  
17 technical report by the state agency that looked at  
18 fines and fees, what a SAC can do on an issue, and  
19 we really see it as we saw it here.

20 A SAC given our structure, how we work,  
21 and having these hearings and being members of the  
22 community where we can really put people together  
23 and call panelists together because we kind of know  
24 the area -- know the field, it really allows for a  
25 human story to come out.

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1           There's nowhere where -- this is this  
2 big disconnect here between what the policy is in  
3 the states and then there's practice which is  
4 counter to it. And so to hear the testimony of  
5 individuals themselves who have lived it and to  
6 understand how it works and how it contradicts our  
7 state policy, I think it really shows just how  
8 impactful the SAC process can be.

9           So we're very pleased with it. We're  
10 very excited about it. And again, the progress is  
11 slow. But we are optimistic that in the year or  
12 two or three ahead that there will be reform in  
13 this area as we're seeing with our last report.

14           It's taken a few years, but the  
15 commission was wonderful in sending out a letter to  
16 our legislatures here, got their attention. There  
17 was a deep dive summer study on the CAF or civil  
18 asset forfeiture report from 2018. A deep dive  
19 study, this summer, 2019, again the slow process  
20 but moving. And we now have a bill that would  
21 reform and improve our forfeiture laws that will be  
22 heard -- filed now and heard next week.

23           So we're, as a SAC, feeling like we  
24 understand the value of what we do, where the  
25 reports are, and we really appreciate the support

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1 from the Commission.

2 CHAIR LHAMON: That's perfect to hear.  
3 And it's terrific to hear about the progress  
4 resulting from your work to see the goal. So thank  
5 you very much, and thank you again for presenting  
6 to us. I really appreciate it.

7 MS. DI IANNI: Okay. Thank you all.  
8 Thank you. Bye-bye.

9 **DISCUSSION AND VOTE ON TIMELINE, DISCOVERY PLAN,**  
10 **AND OUTLINE FOR COMMISSION PROJECT ON BAIL REFORM**

11 CHAIR LHAMON: The next item on our  
12 agenda is a discussion and vote on the discovery  
13 materials which are the discovery plan, outline,  
14 and timeline for the Commission project on bail  
15 reform. To begin discussion, I move that we  
16 approve the materials as circulated by OCRE on  
17 Monday, February 24. Is there a second?

18 COMMISSIONER KLADNEY: Kladney here.  
19 I'll second.

20 CHAIR LHAMON: Thank you. To continue  
21 discussion, I'll offer two points. Cash bail and  
22 pre-trial detention practices have long been a fair  
23 administration of justice issue as we saw raised  
24 continuously in our project on the imposition of  
25 fines and fees.

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1                   We've heard similar civil rights  
2 concerns about legal financial obligations from our  
3 Maryland Advisory Committee and just a few minutes  
4 ago from our Tennessee Advisory Committee.

5                   The materials we consider today will  
6 allow us to dig deep on the bail bond system,  
7 including the role of the private bail industry.  
8 We'll look at the different systems that have been  
9 implemented in a range of states and local  
10 jurisdictions around the country in response to  
11 constitutional civil rights concerns about the  
12 imposition of bail.

13                   I believe these materials set this  
14 investigation with a solid foundation, and I look  
15 forward to the Commission's briefing on May 8th,  
16 2020. Is there any other discussion of these  
17 materials?

18                   (No audible response.)

19                   CHAIR LHAMON: Hearing none, I'll call  
20 the question and take a roll call vote.  
21 Commissioner Adegbile, how do you vote?

22                   COMMISSIONER ADEGBILE: Aye.

23                   CHAIR LHAMON: Commissioner Kirsanow?

24                   COMMISSIONER KIRSANOW: Yes.

25                   CHAIR LHAMON: Commissioner Kladney?

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1 COMMISSIONER KLADNEY: Yes.

2 CHAIR LHAMON: Commissioner Yaki?

3 COMMISSIONER YAKI: Aye.

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

6 **CONSIDERATION OF PUBLIC COMMENT IN RESPONSE**  
7 **TO HUD'S PROPOSED REGULATION ON AFFIRMATIVELY**  
8 **FURTHERING FAIR HOUSING**

9 CHAIR LHAMON: Next, we will move to an  
10 amended item on our agenda which is consideration  
11 of a Commission public comment on the Department of  
12 Housing and Urban Development's proposed rule  
13 regarding the Fair Housing Act's requirement on  
14 affirmatively furthering fair housing.

15 So our typical practice has been to  
16 read the full statement under consideration by the  
17 Commission. Given the length of this proposed  
18 comment, I will instead summarize its main points.  
19 They are that HUD has proposed a new rule regarding  
20 the Fair Housing Act's requirements on  
21 affirmatively furthering fair housing which this  
22 comment opposes.

23 We heard from current and former HUD  
24 officials that discrimination in housing continues  
25 to be a pervasive problem throughout the United

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1 States. The Affirmatively furthering fair housing  
2 requirement is a crucial provision of the Fair  
3 Housing Act.

4 HUD issued a rule in 2015 to ensure  
5 that the provision was actively enforced and this  
6 proposed rule returns us to the lax enforcement  
7 prior to 2015 as reported to the Commission from  
8 D.C. Advisory Committee.

9 The proposed rule does not adequately  
10 address the issues that motivated the creation of  
11 the existing rule and is inconsistent with HUD's  
12 own mission to create strong, sustainable,  
13 inclusive communities and quality affordable homes  
14 for all.

15 We urge HUD to restore the 2015 rule  
16 and not adopt a proposed rule. Without a rule that  
17 actually holds government entities to account,  
18 affirmatively furthering fair housing remains  
19 aspirational and powerless against the many  
20 challenges still standing in the way of ensuring  
21 fair housing for all.

22 To open the floor for discussion, I  
23 move to approve the comment as circulated by my  
24 special assistant on Thursday, February 27. Is  
25 there a second?

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1 COMMISSIONER KLADNEY: Second, Kladney.

2 CHAIR LHAMON: Thank you. Open the  
3 floor for discussion.

4 (No audible response.)

5 CHAIR LHAMON: Hearing none, I'll call  
6 the question and take a roll call vote.  
7 Commissioner Adegbile, how do you vote?

8 COMMISSIONER ADEGBILE: Aye.

9 CHAIR LHAMON: Commissioner Kirsanow?

10 COMMISSIONER KIRSANOW: No.

11 CHAIR LHAMON: Commissioner Kladney?

12 COMMISSIONER KLADNEY: Yes.

13 CHAIR LHAMON: Commissioner Yaki?

14 COMMISSIONER YAKI: Aye.

15 CHAIR LHAMON: And I vote yes. The  
16 motion passes, one Commissioner opposed, no  
17 Commissioner abstained, all others were in favor.

18 **MANAGEMENT AND OPERATIONS**

19 **STAFF DIRECTOR'S REPORT**

20 CHAIR LHAMON: Next, we'll hear from  
21 Staff Director Mauro Morales giving the Staff  
22 Director's report.

23 STAFF DIRECTOR MORALES: Thank you,  
24 Madam Chair. In the interest of time, I have  
25 nothing further to add beyond what is contained in

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1 the report. And as always, I remain available to  
2 discuss any particular issue that any Commissioner  
3 sees in the report. So I thank you and that's all  
4 I have. Thank you.

5 CHAIR LHAMON: Thank you, Mr. Staff  
6 Director.

### 7 III. ADJOURN MEETING

8 CHAIR LHAMON: With that, we can  
9 conclude the business on today's agenda for today's  
10 business meeting. And so if there's nothing  
11 further, I hereby adjourn the meeting at 10:27 a.m.  
12 Eastern Time. Thank you.

13 (Whereupon, the above-entitled matter  
14 went off the record at 10:27 a.m.)

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