FRIDAY, FEBRUARY 20, 2009

The meeting convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C., at 9:30 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman (via telephone)
ABIGAIL THERNSTROM, Vice Chairman (via telephone)
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner (via telephone)
ARLAN D. MELENDEZ, Commissioner (via telephone)
MICHAEL YAKI, Commissioner (via telephone)

MARTIN DANNENFELSER, Staff Director

STAFF PRESENT:

DAVID BLACKWOOD, General Counsel
MARGARET BUTLER
CHRISTOPHER BYRNES, Chief, Programs Coordination Unit
DEBRA CARR, Associate Director
IVY L. DAVIS
DEMITRIA DEAS
LATRICE FOSHEE
MAHA JWEIED
ROBERT LERNER, Assistant Staff Director
SOCK-FOON MacDOUGALL
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor
LENORE OSTROWSKY
EILEEN RUDERT
KIMBERLY TOLHURST
AUDREY WRIGHT
MICHELLE YORKMAN
COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
RICHARD SCHMELCHEL
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CHAIRMAN REYNOLDS: Good morning. This is Chairman Reynolds. The meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights.

It is -- we are late. It is 9:42 a.m., Eastern Standard Time on February 20, 2009.

The meeting is being held at 624 Ninth Street, N.W., Room 540, Washington, D.C., though the majority of Commissioners are participating by phone.

I will, once again, call each Commissioner in order to determine if there is a quorum, just to make it official.

Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: I'm present.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Present.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Here.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Here.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Here.

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: Virtually present.

CHAIRMAN REYNOLDS: Commissioner Taylor?

(No response.)

Okay. Is the Staff Director present?

STAFF DIRECTOR DANNENFELSER: Present.

CHAIRMAN REYNOLDS: Can the Court Reporter hear everyone?

(No response.)

Please have the Court Reporter confirm that he or she can hear everyone?

STAFF DIRECTOR DANNENFELSER: Can you hear me now? Okay.

CHAIRMAN REYNOLDS: Okay. If a Commissioner is participating by phone and wants to make a statement, please identify yourself first. And whenever it is necessary to take a vote, I ask that you provide your name and indicate how you vote.

COMMISSIONER YAKI: Commissioner Reynolds, this is Commissioner Yaki.

CHAIRMAN REYNOLDS: Commissioner Yaki, you have a --

COMMISSIONER YAKI: Point of order.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: I just heard the first Blackberry on the line, so I would ask that the people
in the room make sure that their Blackberrys and cell phones are away from their mics, because since the majority of us are on the phone it will -- it will impact us the most. Like there.

CHAIRMAN REYNOLDS: Okay, folks. Let's move our Blackberrys and Treos away from the phone.

Okay. Let's start with the two known amendments to the agenda.

I. APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: The first is I move to table the discussion of the findings of fact and recommendations for the briefing report on the Department of Justice's enforcement of voting rights in the 2008 presidential election. Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER HERIOT: I wish you had told me that last night.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER HERIOT: I wish you had told me that last night.

CHAIRMAN REYNOLDS: Well, I wasn't aware that -- well, the rationale for this is that recently, as in yesterday, I discovered that we may have -- the changes to the document may not be in accordance with
the understanding at the last meeting.

COMMISSIONER HERIOT: That would be true.

COMMISSIONER GAZIANO: That would be true, but some of us were working --

COMMISSIONER HERIOT: Yes. We have been working to try to make them better.

VICE CHAIR THERNSTROM: There is no cause to postponing it. Let us just move on. We don't need to have a big discussion of that.

CHAIRMAN REYNOLDS: I'm sorry, Abby.

VICE CHAIR THERNSTROM: I'm sorry. This is Commissioner -- this is Vice Chair Thernstrom. There is no cause to moving on. Let's just agree -- agree to the postponement and move on. We can have it -- we don't need a big discussion.

CHAIRMAN REYNOLDS: Okay. All in favor?

Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Pass.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER GAZIANO: Can I pass?

CHAIRMAN REYNOLDS: So you -- that's the equivalent of an abstention?

COMMISSIONER GAZIANO: No. I want to see
if I can vote -- oh, okay. I'll -- can you return to me?

CHAIRMAN REYNOLDS: Yes, okay. I understand now.

Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Pass.

(Laughter.)

VICE CHAIR THERNSTROM: This isn't poker.

(Laughter.)

CHAIRMAN REYNOLDS: Let's go back to Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Okay. And, finally, Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: Okay. The motion passes.

The second amendment to the agenda is to add the rechartering of the Mississippi SAC. Is there
a second?

COMMISSIONER KIRSANOW: Kirsanow. Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Okay. And I vote in the affirmative. The motion passes.

So I move to approve the agenda as amended. Is there a second?

VICE CHAIR THERNSTROM: Second.

Thernstrom. Second.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.
CHAIRMAN REYNOLDS: Commissioner Gaziano?
COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?
COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: Okay. And I vote in the affirmative. The motion passes.

Okay. Next up is the approval of the minutes of the December 12, 2008, meeting.

II. APPROVAL OF MINUTES OF DECEMBER 12, 2008, AND JANUARY 16, 2009 MEETINGS

CHAIRMAN REYNOLDS: Is there a second?

VICE CHAIR THERNSTROM: second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.
CHAIRMAN REYNOLDS: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.
CHAIRMAN REYNOLDS: Commissioner Heriot?
COMMISSIONER HERIOT: Yes.
CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: Yes.
CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: Yes.
CHAIRMAN REYNOLDS: Okay. And I also vote for it, so the motion passes.
Next up, I move that we approve the minutes from the January 16, 2009 meeting. Is there a second?
VICE CHAIR THERNSTROM: Thernstrom. Second.
CHAIRMAN REYNOLDS: Discussion?
(No response.)
Vice Chair Thernstrom, how do you vote?
VICE CHAIR THERNSTROM: Yes.
CHAIRMAN REYNOLDS: Commissioner Gaziano?
COMMISSIONER GAZIANO: Abstain.
CHAIRMAN REYNOLDS: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.
CHAIRMAN REYNOLDS: Commissioner Heriot?
COMMISSIONER HERIOT: Yes.
CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: And I vote in the affirmative.

COMMISSIONER GAZIANO: Actually, could I just amend that? I don't -- let me vote no. I should have raised some specific adjustments to it, but I don't think that is necessary. I just don't agree exactly how it was worded.

CHAIRMAN REYNOLDS: Okay. So please make sure that the record reflects that Commissioner Gaziano voted no.

Okay. Next up, we have Announcements.

III. ANNOUNCEMENTS

CHAIRMAN REYNOLDS: For the month of February, February is Black History Month, in which we honor the accomplishments of black Americans from all walks of life and recognize their extraordinary contributions to the nation's history. These include writers such as Dubois, Baldwin, and Ellison, to name a few; musicians like Mahalia Jackson, Billie Holiday, Duke Ellington, and Billy Strayhorn; and civil rights leaders such as Ella Baker, Robert Moses, and Dr.
Martin Luther King.

We also take special note for those black Americans, past and present, who have served or currently serve in public office, including our new President, Barack Obama. In recognition of these achievements, I hope that public officials, educators, librarians, and people throughout the United States will observe this month by highlighting and honoring the contributions made by black Americans to our nation.

Next up --

COMMISSIONER YAKI: Commissioner -- Chair Reynolds, this is Commissioner Yaki.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER YAKI: Just -- Chair Reynolds, I just wanted to say on the record that the irony of celebrating Black History Month in lieu of the at best insensitive, at worst potentially racist cartoon in The New Yorker, is something that I just wanted to register my personal objection to.

COMMISSIONER GAZIANO: New Yorker? Which cartoon? Are you talking about the one in The New York Post?

COMMISSIONER YAKI: New York Post, that's right.
COMMISSIONER GAZIANO: Oh, okay.

COMMISSIONER YAKI: A cartoon regarding the -- their so-called parody of the stimulus bill. And I just wanted to state for the record my extreme discomfort with that image.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: This is Thernstrom here. Commissioner Yaki, I have not seen it, and I would very much like it if you could forward it to me.

COMMISSIONER YAKI: I will.

VICE CHAIR THERNSTROM: Thank you.

CHAIRMAN REYNOLDS: Any other comments?

(No response.)

Okay. The next item is the submission of the fiscal year 2010 request for congressional appropriations.

V. MANAGEMENT AND OPERATIONS

CHAIRMAN REYNOLDS: This request for appropriations, which first must be cleared by OMB, supports the Commission's baseline operations for 2010, the addition of critical staff, and a few enhanced activities related to its five-year strategic plan goals.

Their proposed request, which was distributed to Commissioners earlier this week via
e-mail, is a $600,000 increase over our 2009 request, and it is $1 million more than our '09 appropriated level.

At the request of various Commissioners, I approached the Staff Director and notified him of my intention to make a motion at this meeting to lift the moratorium, so that we can hire three Commissioner special assistants.

Because three special assistants were not contemplated in the budget distributed to Commissioners earlier this week, I asked the Staff Director to consider adjustments to the budget at various spending categories that would allow for such hiring, and I asked that he come prepared to discuss the adjustments today.

My desire is for an amended budget that will allow us to incrementally move toward a full complement of special assistants, but also allow for a number of other critical staff hires.

With that, I turn the discussion over to the Staff Director.

STAFF DIRECTOR DANNEFELSER: Thank you, Mr. Chairman. The cost, in terms of salaries and benefits, for FY2010 for three Commissioner's Assistants is $335,370. We discovered that the
document that we based the rent projection on was the wrong document, and came across the correct document for what the actual rent is going to be in FY2010. And there is -- actually, the rent is going to be $150,404 less. So that was the starting point was that $150,000.

We also removed the position -- funding for the position of the Budget Assistant, reduced travel by $25,000, postponed the public service announcement in the amount of $35,000, reduced the secretarial support in the Southern Regional Office to about $10,000, and reduced external accounting by about $48,000.

We have some optional services under external accounting that we believe we can do without, particularly since we are anticipating in the budget the hiring of a Budget Chief. So we believe that the Budget Chief will be able to handle what we would have otherwise paid for through those optional services. And that -- those items added up to the $335,370.

VICE CHAIR THERNSTROM: Mr. Staff Director, this is Vice Chair Thernstrom. When is the budget submission due?

STAFF DIRECTOR DANNENFELSER: The date to OMB was actually yesterday, but they did give us an
extension. They are going to allow us to submit it on Monday.

VICE CHAIR THERNSTROM: Okay. So that means we have got to have a vote today on this budget, is that correct?

STAFF DIRECTOR DANNENFELSER: Yes.

COMMISSIONER GAZIANO: Mr. Chairman, this is Commissioner Gaziano. I think it is very helpful that the Staff Director has done this analysis on the assumption that we will vote for a $9.4 million request. But could we begin with that perhaps, and just discuss whether that is really -- if there is a consensus that that is really the figure we should ask for? I wonder whether we should ask for a little bit more, or maybe a lot bit more. But I will defer to you, if you want to cover the discussion in another way.

STAFF DIRECTOR DANNENFELSER: Well, let me just address that. This is the Staff Director. There was a -- what's called a passback from OMB. We did submit a budget request initially for about $12.4 million, and on January 30th we got our passback from OMB, and we had a very short turnaround time -- I think about a week -- that we -- if we wanted to appeal that number -- in which to appeal it. And
also, with the understanding that our budget submission itself would be due on January 19th.

We decided that, given that this was an increase, significant -- not nearly as much as we would like to see, but a significant increase compared to the amounts that we had seen before, and given what we anticipated would be the budget situation, that it would be very difficult to prevail with that type of appeal, we decided to forego the appeal and to just focus our attention on preparing the --

COMMISSIONER GAZIANO: Which --

STAFF DIRECTOR DANNENFELSER: -- $9.4 million budget.

COMMISSIONER GAZIANO: Which -- did you circulate it to Commissioners and I just missed it?

About not appealing?

STAFF DIRECTOR DANNENFELSER: I consulted with the Chairman about it.

COMMISSIONER GAZIANO: Okay. For the record -- and if there is a majority of other Commissioners who are satisfied with $9.4 million, that's fine. But for the record, as I maintained last year, we are not required by statute -- and I am aware of no regulation that binds Commissioners, or statute, to accept this OMB passback.

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We are an independent agency, and I understand why certainly a number of Commissioners wanted to follow OMB's figures in the past. But I at least want it to be clear in the record that we are not required to do so. So regardless of the -- whether we should have pursued an appeal before now or after, we are I certainly think certainly not bound by that $9.4 million figure. We can, it seems to me, require OMB to pass on a higher amount to Congress.

STAFF DIRECTOR DANNENFELSER: Well, we did have a discussion about that point last year, and the General Counsel prepared a memo explaining the legal background and the practice of the Commission over the years with respect to that issue.

COMMISSIONER GAZIANO: Let's review that, then, and maybe we could ask the General Counsel, what statute prohibits us? Is there any statute that prohibits us from exceeding the passback amount?

MR. BLACKWOOD: This is David Blackwood. I did indeed write a memo last year. I didn't bring it with me. I didn't know that topic was coming up. There are restrictions on what can be done as the Commission collectively. I am going on my best judgment, and, yes, there is a specific statute relating to that.
The question that you raise, as an independent agency, and, as you know, there is question about to what degree -- well, I won't say to what degree, but obviously we are an independent agency, but under what status, we -- as a collective body, what the agency can do in -- to oppose what OMB is suggesting.

I think I pointed out last year practice has been that in -- the Commission, as a body, has ignored what OMB has required.

COMMISSIONER GAZIANO: That's what I thought.

MR. BLACKWOOD: Now --

COMMISSIONER GAZIANO: We have requested higher amounts in the past.

MR. BLACKWOOD: Yes, but that is practice.

The law, in my view, my recollection of what I said last year, was that the OMB restrictions do cover the agency as a collective whole. I also pointed out, though, that Commissioners, as special government employees, as individuals, are fully able to lobby on the Hill or suggest a higher amount.

But as a collective body, I believe my best recollection was -- and OMB's position is -- the agency as a whole cannot challenge the passback.
COMMISSIONER GAZIANO: I disagree with that. My recollection is different, that there was no statute that prohibits us from asking for a higher amount, and our practice certainly bears that out. Do you remember what -- it is certainly not in our organic statute.

MR. BLACKWOOD: That is correct. It is not in our organic statute. If you want, I can go get the memo and give you a copy of it.

COMMISSIONER GAZIANO: Well, I would certainly appreciate that, because my recollection certainly isn't detailed. But the --

COMMISSIONER YAKI: This is Commissioner Yaki, if I can just add on to what Commissioner Gaziano is saying. I am still -- I am still unclear as to what you mean by the Commission as a body cannot ask for more. If there is no statutory prohibition against that, but merely practice, or an OMB "naughty naughty letter" from us, I don't understand why we would be constrained from saying -- adding an extra half mill into the budget that we submit to Congress.

MR. BLACKWOOD: Well, my point, Commissioner, is that there is a statute. Unfortunately, I am going on my recollection. I will be glad to go get the memo and report on it, if you
give me about two or three minutes. But there is an explicit statute, is my recollection, that would prohibit federal agencies from challenging OMB.

COMMISSIONER HERIOT: I'd like to see the memo.

MR. BLACKWOOD: I'll get it again.

COMMISSIONER HERIOT: Yes, thank you.

CHAIRMAN REYNOLDS: Okay. At this point, do we need an additional -- well, at this point I would like to move to lift the moratorium on special assistant hiring, to allow the hiring of three additional special assistants, with the understanding that if Commissioner Kirsanow wishes to hire a special assistant during 2010 that the Staff Director shall identify offsets in the budget that would allow an additional hire.

COMMISSIONER HERIOT: Well, why is the motion, then, to lift the moratorium as to three? Why isn't that to lift the moratorium?

CHAIRMAN REYNOLDS: Because we have identified offsets for three, not four. Also, Commissioner Kirsanow has indicated that he is not going to hire a special assistant, in which case the -- my reasoning is that it -- well, I don't see the reason to create a budget line item for an item that
we are not going to make use of.

COMMISSIONER HERIOT: Well, there is the fact that I am not willing to vote, as I told you, for three. I think that sets a very bad precedent. I am very much in favor of lifting the moratorium as to everyone. And if Commissioner Kirsanow isn't interested in hiring a special assistant at this point, that is fine. But I don't want anything to stand in his way from hiring that special assistant, if he should decide to.

COMMISSIONER KIRSANOW: This is Kirsanow. Commissioner Heriot, I appreciate that. I think this is really a -- really not a difference in kind, but matter of degree. I think that Commissioner -- Chair Reynolds makes a very good point that it probably doesn't serve us well to have a line item in there that probably isn't going to be exercised.

By lifting this moratorium as to three, with the understanding that it would be revisited, we are simply -- it is almost virtually the same as lifting the moratorium in its entirety. And I think it just simply saves us the monies that would be allocated in this particular year for another director or another special assistant.

COMMISSIONER YAKI: This is Commissioner
Yaki. Commissioner Kirsanow is saying that if we lift it for all, they will have to do the budget set-asides for those positions regardless. Is that what you are saying, Commissioner Kirsanow? And that is what we don't want to have to do?

COMMISSIONER KIRSANOW: At this particular time.

COMMISSIONER HERIOT: Well, again, I am not willing to vote for a motion that does not lift it as to everyone. But I would be willing to vote for one that lifts it as to everyone, but that stipulates that Commissioner Kirsanow is not going to hire until some later date in the budget year, so that it wouldn't be necessary to adjust the budget for that.

But I don't want to walk away from here and think that from now on we could have seven such slots only, which I think is -- you know, sets a very, very dangerous precedent.

COMMISSIONER KIRSANOW: Kirsanow here. Mr. Staff Director, if we were to lift the moratorium as to all, with the understanding among ourselves, whether it is tacit or explicit, that I am not going to be hiring anybody, are we compelled to list that as a line item in the budget?

STAFF DIRECTOR DANNENFELSER: No, I -- my
reading of it would be that the moratorium would just
lift any blocking situation, but we always -- there is
many times, in Congress and certainly with the
Commission, where we have the authority to fill
certain positions or to spend certain money.

But we make the judgment that we don't
have the appropriations at the current time, or we
have certain priorities at the current time, so we
don't fill all of those authorized positions. We have
many authorized positions now that are not filled,
because we just don't have the appropriations or we
have made priority decisions about what to fill.

So I don't think that the -- lifting the
moratorium completely would certainly not obligate us
to fund all of the positions at this point in time.
That would be a judgment for the Commission to make as
to whether or not it wanted to fund one, two, three,
or four additional positions.

VICE CHAIR THERNSTROM: This is
Commissioner -- Vice Chair Thernstrom. I don't really
understand this discussion, I'm sorry. We at the
moment have a -- don't have a full complement of
potential assistants. To lift it for three rather
than four doesn't really change the fact that it
continues the status quo, except we have increased the
number of Commissioners. I don't see the grand principle here of, well, we can't -- it has to be four or it's zero. I mean, we have been living with --

COMMISSIONER HERIOT: Right now we have a situation where in theory we are sharing, everyone gets .5.

VICE CHAIR THERNSTROM: No, I'm sorry. Commissioner Melendez and Commissioner Yaki are not sharing. Commissioner Yaki does not have a special assistant, period. And I just -- you know, I mean, going the way the chair suggested continues, it seems to me, the current situation, although it -- although very nicely adding a few more Commissioners. I just don't see the grand principle.

COMMISSIONER GAZIANO: It seems like we are --

CHAIRMAN REYNOLDS: This is Chairman Reynolds. I agree with you, Vice Chair Thernstrom. I believe that there is a principle involved, but I don't give it as high a value as Commissioner Heriot. But at the end of the day, under my proposal the only Commissioner who would be affected in a practical way would be Commissioner Kirsanow, and that is why I am willing to defer to Commissioner Kirsanow on this, because he is the one who would have the burden. No
other Commissioner, in a practical sense, would
shoulder a burden until this plan, except Commissioner
Kirsanow, so --

COMMISSIONER HERIOT: Except if
Commissioner Kirsanow gets hit by a truck tomorrow and
replaced by a different Commissioner, that
Commissioner would not have made that agreement.

COMMISSIONER KIRSANOW: That's pretty
morbid.

COMMISSIONER HERIOT: I hope you don't get
hit by a truck, Pete. Look both ways before you cross
the street for me.

COMMISSIONER YAKI: And we certainly hope
you don't fly to Buffalo.

COMMISSIONER GAZIANO: The principle --
this is Commissioner Gaziano. The principle is
important to me, too, but it sounds like we are very
close, so just modifying this to satisfy all of us.
So why don't we -- the motion reflect that we lift the
moratorium as to all Commissioners, who want to hire a
special assistant, and then with regard to the budget
issue we accept Commissioner Kirsanow's current
position that he is -- doesn't have any plans to hire
a separate special assistant in the next fiscal year,
so we don't need to make that a budget item. But
should he choose to do so --

COMMISSIONER KIRSANOW: This is Kirsanow.

I think that makes good sense. I don't see this as a matter of giant principle, simply a matter of accounting as far as I am concerned. And having been assured by the Staff Director that we have got this latitude, that we don't have to necessarily put that in, because we have authorized all four, then I am perfectly satisfied.

COMMISSIONER YAKI: Commissioner Yaki here. My only question for Commissioner Kirsanow is that, depending on what may or may not happen with our budget, maybe we should call this our stimulus budget, if -- this is also for the chair -- if the language were to say that we lifted the moratorium on hiring special assistants, semi-colon, however, that for the remainder of FY09, and into '10, funding shall be available only for three additional. And if in the future a fourth special assistant is required by Commissioner Kirsanow, that budgetary authority -- budgetary authority be sought that, I mean, I would be -- I think that is kind of the middle ground.

VICE CHAIR THERNSTROM: This is Vice Chair Thernstrom. Well, that does not cover the contingency of Commissioner Kirsanow being knocked off by one of
his enemies, so --

COMMISSIONER KIRSANOW: I've got many.

CHAIRMAN REYNOLDS: Well, Pete is a sweet, dear man, and he doesn't have any enemies. But, Pete, as I said earlier, I defer to you. Whether it is what Commissioner Gaziano put on the table or Commissioner Yaki, we are dancing on the head of a pin.

COMMISSIONER KIRSANOW: Yes. I think that there is shades of difference there. The idea is we are lifting the moratorium. I am simply not going to exercise my prerogative to fill that position at this particular time, so let's just go forward and do it. Let's lift the moratorium.

COMMISSIONER YAKI: Okay. Then, why don't we just -- this is Commissioner Yaki. Why don't we just say this, "We are lifting the moratorium; however, the Director is instructed not to budget for a fourth special assistant until such time as directed by Peter Kirsanow or his replacement."

(Laughter.)

COMMISSIONER HERIOT: That works I think.

COMMISSIONER GAZIANO: That works.

COMMISSIONER HERIOT: That works. You know, as long as Pete's right to hire is not contingent on something that he doesn't control.
CHAIRMAN REYNOLDS: Well, it would be -- at least the potential would be there, because we would still have to look at the budget. I mean, we can't spend what we don't have.

VICE CHAIR THERNSTROM: Mr. Chairman, I really would like to go back to your original motion. It was perfectly good.

CHAIRMAN REYNOLDS: Well --

VICE CHAIR THERNSTROM: No.

CHAIRMAN REYNOLDS: Well, let's --

VICE CHAIR THERNSTROM: And it was clear. This thing is now a mess.

CHAIRMAN REYNOLDS: Well, Commissioner Yaki, please repeat -- and, in fact, make a motion. Whatever you just said, please say it again, but make it a motion.

COMMISSIONER YAKI: Well, it depends -- it depends, Commissioner -- Chair Reynolds, if you want me to add your last modification, because it would -- the motion, with your modification, would read that, "The moratorium for special assistants is now lifted; however, that funding -- that funding and authority for the fourth special assistant that would be within the purview of the position occupied by Commissioner Kirsanow would not be funded or allocated until
directed by Commissioner Kirsanow and/or his replacement, and pending a budgetary adjustment that would have -- that would be agreed upon by the Commission."

COMMISSIONER HERIOT: See, that I won't go for. I liked Yaki's motion before.

COMMISSIONER YAKI: I just added the Reynolds --

COMMISSIONER HERIOT: Yes, I know.

COMMISSIONER YAKI: -- clause.

COMMISSIONER HERIOT: I know. I liked it the first time.

COMMISSIONER GAZIANO: And I might even be able to go with "and pending a budget adjustment," but not requiring -- yes, the Staff Director probably would need to adjust the budget, and we are only talking about the hypothetical that Commissioner Kirsanow changes his mind, which is unlikely. That it require a subsequent vote of the Commission to give Commissioner Kirsanow his wish is the problem.

CHAIRMAN REYNOLDS: Okay. Well, we can lump that piece off.

COMMISSIONER GAZIANO: Okay. Good.

CHAIRMAN REYNOLDS: But the trigger rests on whether we find sufficient offsets.
COMMISSIONER HERIOT: Well, we can't have that just for that position. You know, we have to commit now to find those offsets, whatever they are.

COMMISSIONER GAZIANO: The Staff Director would find those offsets. It might take -- I don't know what it would take. And it is very hypothetical, since --

COMMISSIONER YAKI: This is Commissioner Yaki. The whole reason why I stuck myself in the position of having no special assistants for as long as we have is because at the time that we enacted this -- enacted this the suggested offsets were untenable and unacceptable to the -- actually, to a unanimous commission.

This was when we were in a deep budgetary hole, and we made a conscious decision to do this, and it was something that I suggested, along with the chair, in order to accommodate that. I -- you know, hopefully we will not have to revisit those bad times, but, as I understand it, the chair has worked very diligently with the Staff Director to find non-objectionable offsets, which I still want to hear about, for the three positions that we are hiring now, but that the fourth could be a -- could be -- and I can't speak for the chair -- could be a tipping point.
in terms of -- in terms of offset that some members of
the Commission would not want to -- would not want to
sacrifice.

So I believe that, you know, either we go
back to the original motion of the chair or we go to
the Yaki/Reynolds motion, which would at least give
the purview to the Staff Director, provided --
provided he or she finds the requisite offsets. It
may not require Board approval, but certainly if the
Director is charged with finding -- finding offsets,
then the Board will have some oversight on that
particular matter.

CHAIRMAN REYNOLDS: Pete, as far as I am
concerned, it is your call.

COMMISSIONER KIRSANOW: You know, I am
perfectly satisfied with the Yaki/Reynolds
formulation, or the Yaki formation with some mention
of the above.

CHAIRMAN REYNOLDS: No, no, just pick on.

COMMISSIONER KIRSANOW: I'll go with the
Yaki formulation.

CHAIRMAN REYNOLDS: Okay. Commissioner
Yaki, please make a motion, just the Yaki motion sans
the Reynolds addition.

COMMISSIONER YAKI: Okay. I move that the
moratorium on special assistants be lifted; however, that funding shall only be made available for three special assistants, and that funding for the fourth special assistant (assigned -- who would be assigned to Commissioner Kirsanow) shall not be funding -- funded or budget allocated until such time as Commissioner Kirsanow (and/or his or her replacement) --

COMMISSIONER HERIOT: His.

(Laughter.)

COMMISSIONER HERIOT: It is not a his or her.

(Laughter.)

COMMISSIONER YAKI: And his replacement -- well, you know, Peter, we really haven't -- you know, never mind. So with that modification, seek such a special assistant through request to the -- by request to the Staff Director. Is that it?

CHAIRMAN REYNOLDS: I second.

COMMISSIONER HERIOT: Well, I need to hear it read back again. Can the Court Reporter read back?

COMMISSIONER YAKI: Can the Court Reporter read it back? I am --

COMMISSIONER GAZIANO: I don't know that the Court Reporter has a microphone.
COMMISSIONER YAKI: Okay. Motion that the moratorium on special assistants be lifted; however, that funding shall only be allocated for three special assistants, and that funding for a fourth special assistant (to be assigned to Kirsanow) shall not be funded or budgetary amounts allocated for that position until such time as Commissioner Kirsanow (or his replacement) shall request that of the Staff Director.

CHAIRMAN REYNOLDS: Gail, are you comfortable with the language?

COMMISSIONER HERIOT: I'm comfortable.

CHAIRMAN REYNOLDS: I second the motion. Do we need additional discussion?

COMMISSIONER GAZIANO: Call the question.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: I vote yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: Yes.

CHAIRMAN REYNOLDS: Commissioner Yaki?


(Laughter.)

CHAIRMAN REYNOLDS: Motion passes unanimously. Okay.

COMMISSIONER GAZIANO: Mr. Chairman, we have in the hearing room been handed David Blackwood's memo of last year, and a separate memorandum to Ken Marcus, I assume some time before that. Have you all received those via e-mail?

CHAIRMAN REYNOLDS: No.

VICE CHAIR THERNSTROM: No.

COMMISSIONER GAZIANO: Oh, okay. Well, I made -- I am not sure -- that may be helpful. I don't -- I don't read it quite the same way the General Counsel does. I see there is a statute cited that the President "shall prepare budgets of the United States Government." And, of course, that includes the legislative budget or could include the legislative budget. But, clearly, Congress doesn't have to follow the President's recommendation on its own budget. I don't see that statute as directly bearing on the question.

I do see a lot of OMB Circulars cited and
interpretations based on OMB Circulars. And I don't find the OMB Circulars compelling authority for the practice of the Commission asking more than OMB has.

By the way, I find it a very good practice to get OMB's advice on these things. I think it is a sound practice that we may go through the OMB process. But I do not find any of that convincing as to our statutory authority to request the amount that we request from Congress, especially since half of us were appointed from Congress.

CHAIRMAN REYNOLDS: Commissioner Gaziano, is that a separate issue? Are you dissatisfied with the budget that we have on the table?

COMMISSIONER GAZIANO: I am somewhat dissatisfied. We did ask for 12.4. By the way, I don't remember that we were -- in the future, I think we should be asked -- and maybe I missed it, so I apologize if I did -- what our request is, but the 12.4 figure -- if you don't mind, I would like the Staff Director to elaborate why -- what the basis of 12.4 is. I can guess that that would fill a lot of our vacant positions. Why did we take the position that 12.4 was the appropriate amount?

STAFF DIRECTOR DANNENFELSER: Well, as you said, it would fill many positions that have been
vacant. And if we had a perfect world, we would want to fill those positions. And so that is what we requested, but now we have to live within the amount that we, you know, have got -- received through the passback.

COMMISSIONER GAZIANO: I disagree with that last point. But did you make an assessment as to which positions we could fill and what activities we could undertake with $12.4 million?

STAFF DIRECTOR DANNENFELSER: Yes, we did. At the time we prepared that budget and presented it, we did make that kind of assessment.

COMMISSIONER GAZIANO: And --

STAFF DIRECTOR DANNENFELSER: We checked with all of the directors of the different offices, with the people in the regions, and then made our own assessment, and then consulted with the Commissioners as we put that forward for the Commission vote previously.

COMMISSIONER GAZIANO: And just to clarify for me, because --

COMMISSIONER YAKI: That included the civil rights cruise, right?

STAFF DIRECTOR DANNENFELSER: That was not in there.
COMMISSIONER GAZIANO: Because maybe I forgot, did we vote on this 12.4 figure?

STAFF DIRECTOR DANNENFELSER: Yes.

COMMISSIONER GAZIANO: Okay. I must have -- when was that? Was that last September?

STAFF DIRECTOR DANNENFELSER: September it was, yes. Yes, it was signed I believe September 5th or 6th.

COMMISSIONER GAZIANO: Okay. And just based on your review, would that have filled -- would that be sufficient to fill all our vacancies or most of our vacancies?

STAFF DIRECTOR DANNENFELSER: It would have filled most of our vacancies. I don't believe we -- for instance, we had -- we have -- well, not all of the authorized vacancies, but about -- I think it was about 16 positions. We have, for instance, a Public Affairs person and a Congressional Affairs person --

COMMISSIONER GAZIANO: Yes.

STAFF DIRECTOR DANNENFELSER: -- authorized within the Office of the Staff Director. We were proposing to fill that with one person. The one person would handle both duties. So -- but we did not seek to fill every position.

COMMISSIONER GAZIANO: Yes. A lot of this
is coming back to me now, and those seem like critical positions to me. I just couldn't remember whether it was all of the vacancies or just the critical vacancies. I tend to think, Mr. Chairman, that 9.4 is better than 8.4 or 8.8, but not quite what we should really be asking Congress. And I would just like to hear other people's opinion on that.

CHAIRMAN REYNOLDS: Well, I don't think that there is -- that you will find any disagreement that -- that we would rather have our ask as opposed to the passback number. But looking at the amount of time that we have left, and also looking at the fact that the decision to deviate from OMB's recommendation, I think that that requires a separate conversation. I don't think anyone came to this meeting prepared to have that conversation.

COMMISSIONER MELENDEZ: This is Commissioner Melendez. I have a question. If we submitted a higher number to Congress, and spending doesn't occur until October of this year, do we have time to readjust the budget at that point before October 1st?

CHAIRMAN REYNOLDS: I believe the answer is no. But, Marty, David, anyone, correct me if I am wrong. I believe that, assuming we hand the budget in
on Monday, then essentially it is out of our hands.

STAFF DIRECTOR DANNENFELSER: Well, what we hand in is our -- what we are saying -- this is our intention of how we expect to spend this money. There may be changes in terms of needs that occur, and there may be more money that gets freed up. There could be attrition that would occur among the staff. There could be other types of changes that could occur, and that would then free up money to be spent in other areas that are not now contemplated.

CHAIRMAN REYNOLDS: Okay. I thought that Commissioner Melendez was asking whether we would have another opportunity to increase our ask.

STAFF DIRECTOR DANNENFELSER: Oh, I'm sorry.

COMMISSIONER MELENDEZ: No. What I was asking was let's say we sent in a higher figure, 12 million or whatever it is, have we tried that? You know, something different than just going back to the passback every time? And what would be the consequences of doing that? Would they tell us at some point before October 1st of this year, would start spending for 2010, that we could readjust and go back to where we are now as far as this budget that you would present today?
STAFF DIRECTOR DANNENFELSER: Well, if we had appealed, and the appeal had not been determined before we had to submit the budget, I -- I assume that if we were to win our appeal then perhaps they would give us authority to increase. But --

COMMISSIONER GAZIANO: By the way, if I had been asked whether we should appeal, I am not sure I would have agreed we should appeal to OMB. I would have said let's just skip that, and let's just vote the amount that we want OMB to send to Congress.

I don't think we should be bound by an appeal. Maybe it would be fine to go through it, if time permitted. Maybe some people would think that it's a wise practice. But I'm not sure that the appeal is a good thing anyway. It suggests that we are bound.

STAFF DIRECTOR DANNENFELSER: Well, let -- the General Counsel pointed out a passage in his May 28, 2008, memo in which it says that, "To ensure consistency within the government, OMB is required to 'establish government-wide financial management policies for executive agencies' in any sites."

31 U.S. Code, Section 503.

COMMISSIONER GAZIANO: We are not an executive agency.
COMMISSIONER HERIOT: Are we an executive agency?

COMMISSIONER GAZIANO: We are not an executive agency.

STAFF DIRECTOR DANNENFELSER: Then, he goes on to point out that the Commission has recognized this power by adopting AI 1-1, Section 1.02. So we would conceivably need to amend our AI to change that policy.

COMMISSIONER GAZIANO: The AI that he cites is somewhat vague to me. It may be inconsistent with my understanding, but I am not even sure. The AI is -- the Commission is governed by -- in its administrative functions by specific legislation. Again, I don't think this is specific --

CHAIRMAN REYNOLDS: Well, Todd, I mean, again, we were not prepared to have this conversation. You have the memo in front of you. The rest of us don't. We have a deadline in front of us. Yes, it would be better if we had more money, but it seems to me that the issue that you have put on the table is -- I don't think that we can get our arms around that particular issue during this meeting.

COMMISSIONER GAZIANO: Well, I regret that -- I assumed we were prepared or we should have been
better prepared for it, since we had this discussion last April and last May. I am just trying to raise these principles, if -- if -- and I will -- you know, I will perhaps offer a motion that we increase the amount.

And if it -- after raising this issue, if the majority of Commissioners, for whatever reason, legally or otherwise, don't want to vote for that higher amount, that's fine. But I at least wanted to state for the record that we have that authority, and do appreciate hearing from some other Commissioners that they seem to agree.

Commissioner Yaki, do you agree with that statutory interpretation I am offering?

COMMISSIONER YAKI: This is Commissioner Yaki. I agree with the interpretation by Commissioner Gaziano. I think that we have perhaps a more salutory environment in which to push it than we did before. But I also understand from the chair that we have an obligation or a deadline to get this thing out the door, regardless.

As much as I have been the one screaming about the fact that -- over the years that we could ask for more money, and have lost every time, I think -- I always try to raise it early enough in the

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process, so we can identify what that money would go for. So I am a little hesitant, you know, in terms of supporting a motion now by Commissioner Gaziano. But certainly in principle I support what he is saying.

COMMISSIONER GAZIANO: Okay. That -- and maybe it will -- maybe we should reserve this for a fuller discussion at a later time if -- I won't offer such a motion if it -- if it appears that a majority of the Commission, for whatever reason, isn't willing to ask for a higher amount. But certainly this was the appropriate time to raise it, since I thought we had raised it before.

COMMISSIONER HERIOT: I guess I have just one question here. I mean, in principle, I think that Todd is probably right that, you know, we are not bound by OMB. My question -- and this is for anybody who has any insight on this -- is if we were to ask for more, is that likely to be, you know, received in Congress in some positive way? Or is it just going to be viewed as not playing -- not playing the game properly and perhaps even working to our detriment?

CHAIRMAN REYNOLDS: Looking at the reaction to past decisions to ignore the OMB number, I think that it would be viewed as -- well, I don't think it would be viewed favorably by OMB or some
folks from Congress.

COMMISSIONER HERIOT: During that history where we were asking for more than OMB had authorized, did we ever get more than OMB had authorized?

CHAIRMAN REYNOLDS: I can't say for certain. I believe the answer is no. Our budget has essentially been flat for about a decade.

STAFF DIRECTOR DANNENFELSER: This is the Staff Director. The Director of the Office of Management has indicated that the answer to that question is no, that whenever there was a request for more funds it was not granted, and she has some institutional memory in that area.

COMMISSIONER GAZIANO: That may be. Again, I don't think I am inclined to make a motion. It may have actually helped us -- the Commission receive the amount that was requested and the amount requested not be cut.

So it is -- it is an interesting question, and I am glad that Commissioner Heriot raised it, because, quite frankly, I had that same thought in my own mind. But if there isn't a majority interested in asking for other reason, I will suggest we end the discussion and vote on the amount that the rest of the Commission seems willing to ask for.
CHAIRMAN REYNOLDS: Okay. On that note, I guess the first motion I would like to make on this topic, I move to amend the budget and the accompanying documentation to reflect the changes recommended by the Staff Director. Is there a second?

COMMISSIONER KIRSANOW: Kirsanow. Second.

VICE CHAIR THERNSTROM: Seconded. Vice Chair Thernstrom.

CHAIRMAN REYNOLDS: Okay. Discussion?

COMMISSIONER MELENDEZ: This is Commissioner Melendez. I still, you know, have some concerns. Although I support the special assistants to all of the Commissioners, you know, the issue on -- there is a lot of issues that I still have. I know that I had prioritized the Human Resource Director, and I know that we are, you know, still with that one.

It ties into the capital plan I think for the overall Commission. And I don't know -- I know that one of our mandates is to do a certain amount of public announcements. Sounds like we're kind of cutting that down. I am not sure whether -- and that is -- I think that is a mandate we are supposed to do.

It also -- you know, the indepth discussion, you know, on this total budget I don't think has been adequate. The issue on the conference
we are supposed to have -- and this is pertaining to
the past budget of -- you know, the current budget as
to the questions I had asked the Staff Director about
where do we stand with current budget, you know,
hasn't been totally responded -- didn't get a lot of
response back on many of my questions.

And so I have a real concern, because I
know that we have this conference coming up. I have
no information on whether or not that is still
feasible to even do it, based on the current budget.
So I just -- you know, the whole budget process as far
as kind of monitoring that as we go along doesn't --
so I am not satisfied with it, and --

CHAIRMAN REYNOLDS: Commissioner Melendez,
I share your concerns. And, in fact, I have -- I will
make -- I will commit to you that those questions that
have been pending for several months, that you will
get a response one way or the other before the next
meeting.

COMMISSIONER MELENDEZ: Okay. And then,
just -- you know, I know that we have -- you know,
within what we are submitting to Congress, you know,
it says that we still have only chartered half of the
SACs. And, as you know, I have been always a
supporter of trying to get more funding to go to the
SACs. We still don't have a Western Region Director out west, and we still --

CHAIRMAN REYNOLDS: Mr. Melendez?

COMMISSIONER MELENDEZ: -- are proposing to hire assistants in some of the other regions. So I am not totally -- as far as the priorities, I am not really totally satisfied with this budget. So I am just letting you know that.

CHAIRMAN REYNOLDS: Okay. Thank you. Any other comments?

COMMISSIONER HERIOT: I guess I would have to add I am not entirely satisfied with the budget either.

CHAIRMAN REYNOLDS: Okay. Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: I vote yes. I'm sorry. I had it -- had the phone a little ways away from me. I vote yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: No.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Oh, oops, sorry. I had the mute button on. Pass.

CHAIRMAN REYNOLDS: Okay. I vote in favor. Commissioner Yaki?

COMMISSIONER YAKI: Point of question for the Parliamentarian. How many votes does this need to pass?

CHAIRMAN REYNOLDS: Majority.

MS. MONROIG: And there are seven Commissioners.

COMMISSIONER YAKI: But the majority of those voting? Does that include abstentions?

MS. MONROIG: So four votes, and there are already four votes in favor.

COMMISSIONER YAKI: Okay. Then, abstain.

CHAIRMAN REYNOLDS: Okay. So the motion passes.

Next item. Okay. The next item is the -- and we were just voting to amend the paperwork to reflect the changes that Marty discussed earlier.

COMMISSIONER GAZIANO: Oh, okay. Maybe I misunderstood the vote, then. I'm sorry. What --
apologize, and I might ask to amend my -- which --
what was the last vote on? I'm sorry.

CHAIRMAN REYNOLDS: Okay. Well, let me
repeat the motion.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN REYNOLDS: I move to amend the
budget and the accompanying documentation to reflect
the changes recommended by the Staff Director.

COMMISSIONER GAZIANO: Oh, yes. I vote
yes on that. It's the amount that I may vote no on.

CHAIRMAN REYNOLDS: Commissioner Melendez,
would you like to change your vote? Commissioner
Melendez? Commissioner Yaki?

COMMISSIONER YAKI: Are we changing our
vote?

(Laughter.)

CHAIRMAN REYNOLDS: Well, just to ensure
that you did not -- well, do you want to change your
vote, in light of the fact that we are not voting on
the budget right now?

COMMISSIONER YAKI: No.

CHAIRMAN REYNOLDS: Okay. All right.

Now, I move that the Commission approve the submission
of a request for $9.4 million in appropriations for
fiscal year 2010 to Congress as previously amended.
Is there a second?

VICE CHAIR THERNSTROM: Second. Vice Chair Ternstrom seconds it.

CHAIRMAN REYNOLDS: Okay. I assume that we have already discussed this issue. So I will ask Vice Chair Ternstrom, how does she vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Pass.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Pardon? Could you repeat?

CHAIRMAN REYNOLDS: The motion reads -- well, I move that the Commission submit -- approve submission of a request for $9.4 million in appropriations for fiscal year 2010 to Congress as previously amended.

COMMISSIONER MELENDEZ: I oppose. No.

CHAIRMAN REYNOLDS: Okay. Commissioner
Yaki?

COMMISSIONER YAKI: Abstain.

CHAIRMAN REYNOLDS: And I vote in the affirmative. Commissioner Gaziano?

COMMISSIONER GAZIANO: No. But let the record reflect I only object to the amount. I would ask for a higher amount.

CHAIRMAN REYNOLDS: The motion passes.

VI. PROGRAM PLANNING

CHAIRMAN REYNOLDS: Okay. Next up we have SAC rechartering. Bear with me. Oh, no, actually there is a letter dated February 5th that was received by the Staff Director from officials at English First and ProEnglish. They are requesting that the Commission reopen for 90 days the comment period on the briefing on specifying English as the common language of the workplace, every employer's right or violation of federal law.

The briefing was held on December 12, 2008, and pursuant to Commission policy had a comment period of 30 days. Thus, the term to comment expired on January 11, 2009. Is there a second?

COMMISSIONER HERIOT: I second.

CHAIRMAN REYNOLDS: Discussion?

VICE CHAIR THERNSTROM: There hasn't been...
a motion, has there, Mr. Chairman, that --

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: I think he is moving.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: You said there had been a request. Nobody from whatever they are called -- the English First, or whatever they are called, you did not make a motion that I heard.

CHAIRMAN REYNOLDS: Okay. Well, I move that we extend the period for 30 days, the comment period.

COMMISSIONER HERIOT: 30 days or 90 days?

I thought they asked for 90.

STAFF DIRECTOR DANNENFELSER: But the Chairman is proposing 30.

CHAIRMAN REYNOLDS: Okay. They did.

COMMISSIONER HERIOT: I mean, is there any point to extending it for 30 days if they need 90 to do what they want to do?

CHAIRMAN REYNOLDS: Oh, okay. I move that we extend it for 90 days. Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Okay. Discussion.

Here are my views. I think 90 days is too long. I
also think that opening the comment period, because we received a letter from an organization, is a precedent that I don't particularly like. However, we also received a request from Capitol Hill, from a Congressman, to extend the comment period. On that basis --

COMMISSIONER YAKI: Which member?

CHAIRMAN REYNOLDS: I believe it was Peter King.

COMMISSIONER YAKI: Oh.

CHAIRMAN REYNOLDS: On that basis, I would support the motion. But for the requests from Capitol Hill, I would not under these circumstances.

COMMISSIONER GAZIANO: Mr. Chairman, if it is all right, the letter from the member of Congress, was it so that the member of Congress could submit something, or was it so that we could receive comments from other organizations as well? Do you remember, or do you have that letter handy?

CHAIRMAN REYNOLDS: It wasn't a letter. It was a phone call.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN REYNOLDS: And the idea was to essentially provide the time for the organizations that I mentioned.
COMMISSIONER YAKI: Let me ask you this. Was the bill -- was the phone call from his staff or from the Congressman?

CHAIRMAN REYNOLDS: Staff.

COMMISSIONER YAKI: I would just note that I have -- I know Congressman King and his legislative agenda. I would say that we have had requests in the past from members of the Judiciary Committee on items not related to the opening of a record. You know, as much as -- as much as I agree with the chair's reservations about this, and I certainly think that 90 days is extraordinarily long for an organization that probably has testimony pretty much on print, on their print button, and I strongly object to the 90 days.

COMMISSIONER KIRSANOW: Mr. Chair, I would suggest that maybe we shorten it to at least 60 days, at most 60 days. I think that is more than sufficient time, provided that we communicate that very quickly to those interested parties who have expressed an interest in submitting something. And I believe it was Representative Steven King, not Peter King.

CHAIRMAN REYNOLDS: Thank you.

VICE CHAIR THERNSTROM: Mr. Chairman, this is Vice Chair Thernstrom. Why do they need the extra time? I mean, we have had this record open.
it does set a terrible precedent. We have got a backlog of overdue late reports, and now we are just slowing the process of the Commission up once again. You know, why couldn't they get whatever they have to say to us in a timely fashion.

COMMISSIONER GAZIANO: Mr. Staff Director?

COMMISSIONER HERIOT: Same reason we can't do anything in a timely fashion.

COMMISSIONER GAZIANO: Mr. Staff Director, let me go back to your comment on -- where is this -- this report isn't ready to be sent to us anyway, is it?

STAFF DIRECTOR DANNENFELSER: No, it's not.

COMMISSIONER GAZIANO: Okay. At what stage -- do you remember at what stage this report is?

STAFF DIRECTOR DANNENFELSER: This is one where the staff has gone back to the panelists to ask them to review the transcripts, and they are pulling information together. It has not been written. The people involved in this have been pretty involved with moving the statutory report forward, so it is something that they would begin to work on in a couple of months.

COMMISSIONER GAZIANO: Okay. Good, good.
Well, that affects my thought. I share some of the concerns about how long we keep it open, but keeping it open for some short length of time, however we define that, but will not keep it from -- the staff from doing most of its work or keep it from being sent to us.

STAFF DIRECTOR DANNENFELSER: No, I don't believe so.

COMMISSIONER HERIOT: By the way, on the notion of they just need to push a button, evidently it says in the letter here, "Cancer struck swiftly for an important leader for English language issues -- Jim Boulet of English First, who entered the hospital and died during the period." English First is a very tiny organization, and evidently one of their leaders died during the period directly after our briefing. And that is what has slowed them down. These things do happen.

It seems to me that it is extraordinary for us to open our record for 90 days on behalf of an organization that was aware of the briefing. But when a member of Congress requests us to do so, I think we should simply do it. We have been much later on things than 90 days.

CHAIRMAN REYNOLDS: Hello, folks. I'm
sorry, I was disconnected. I'm just rejoining you.

COMMISSIONER YAKI: I have a point of information. Are we going to notify any group that has previously testified that -- or submitted testimony that the period -- if this were to prevail, that the period has been extended, and that they have an opportunity to supplement or replace their testimony as a result?

COMMISSIONER HERIOT: I've got no problem with that. And we could put a notice in the Federal Register as well.

COMMISSIONER GAZIANO: Sure. I think that is a good idea if we are going to extend the period at all.

CHAIRMAN REYNOLDS: Okay, folks. I had been disconnected.

COMMISSIONER YAKI: Well, we've known that for a long time.

(Laughter.)

CHAIRMAN REYNOLDS: Okay. Have we had discussion around the length of time, in terms of the postponement?

COMMISSIONER HERIOT: Gerry, I don't know if you were there when I -- I read from the letter here. The reason they want an extension is that one
of their leaders got cancer and died during the period. And, of course, English First is a tiny organization, and if one of their leaders has -- has entered the hospital and died during the period, you know, you can see why this would throw them off their game.

CHAIRMAN REYNOLDS: But I'm not sure that justifies 90 days.

COMMISSIONER GAZIANO: I think Commissioner Kirsanow suggested 60 is --

COMMISSIONER KIRSANOW: Yes. I would move that we open up the record to accommodate further submissions for a period of 60 days from today's date.

COMMISSIONER GAZIANO: And I don't know if you were on the call, Mr. Chairman, but the Staff Director indicated that it is due to a lot of other work. The staff is still in the sort of early phases, so that that wouldn't significantly -- while the record is being held open, wouldn't significantly delay the report getting to us, because a lot of other work still needs to be done on it.

CHAIRMAN REYNOLDS: Okay. Well, then, I second Peter's motion. Do we want to vote at this point?

COMMISSIONER HERIOT: Yes. We probably
should have done that as a motion to substitute, but
let's just do it.

COMMISSIONER GAZIANO: Just one point of
clarification. The request from the Congressional
Office, was it for any specific period of time? Or
that we just generally consider a sufficient time? Do
you remember?

CHAIRMAN REYNOLDS: No, I don't.

COMMISSIONER HERIOT: Gerry, for the
record, could you withdraw your first motion, so that
we are least doing something generally in order here?

CHAIRMAN REYNOLDS: Motion withdrawn.

COMMISSIONER HERIOT: Now we can vote on
Pete's motion.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: No. And let the record reflect I wanted a much shorter period of time.

CHAIRMAN REYNOLDS: Okay. I vote for it, with the -- with reservations.

VICE CHAIR THERNSTROM: Well, if it's going to pass, I'm going to change my note to no as well, because I really don't agree with the 60 days.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: Did you all hear me, that this leader had cancer and died?

VICE CHAIR THERNSTROM: Look, 60 days -- I appreciate that, and now I understand the legitimacy of the request. But 60 days shouldn't be necessary.

COMMISSIONER HERIOT: I wish good health to all of us.

VICE CHAIR THERNSTROM: Pardon me?

COMMISSIONER HERIOT: I wish good health to all of us.

VICE CHAIR THERNSTROM: Look, I mean --

CHAIRMAN REYNOLDS: We voted. You folks can discuss that offline if you wish.

VII. STATE ADVISORY COMMITTEE ISSUES

CHAIRMAN REYNOLDS: Next item up is a
motion that the Commission recharter the Oklahoma State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on the recommendations of the Staff Director. Andrew Lester, Currie Ballard, Michael Barlow, James Bryant, Cara Watts, Anthony Douglas, Brandon Dutcher, Hannibal Johnson, Karen Langdon, David Lee, Mark Liotta, Kay Martin, and Michael Scaperlanda.

VICE CHAIR THERNSTROM: Mr. Chairman, before we do that, I want to make sure that the Court Reporter has it accurate that I have changed the last vote in opposition to the length of the time.

CHAIRMAN REYNOLDS: Please have the Court Reporter confirm that he has made the -- that he has made the change, or that he has --

STAFF DIRECTOR DANNENFELSER: He has indicated that he did make the change.

VICE CHAIR THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Very good.

VICE CHAIR THERNSTROM: Thank you very much. We can go ahead.

CHAIRMAN REYNOLDS: The Commission also appoints Andrew Lester as Chair of the newly rechartered Oklahoma State Advisory Committee. The
members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

COMMISSIONER KIRSANOW: Kirsanow. Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: This is Commissioner Yaki. I just want to raise the point and the objection that we -- as much lip service as was paid to the need for "balance" from previous acts, that in this particular SAC we have three members who are part of the same think-tank. Two of them are part of the same non-profits. There is substantial overlap amongst many of them. It hardly seems like there was any balance put on this fact, and I will be voting against it.

CHAIRMAN REYNOLDS: Okay. Mr. Staff Director, two questions. First, please confirm that Mr. Yaki's -- Commissioner Yaki's statements are -- let me know if they are accurate. But, more importantly, let me know if you believe that overall we have a balanced SAC that reflects a diversity of viewpoints.

COMMISSIONER MELENDEZ: Commissioner
Melendez here. I want -- the balance between gender, women, could you comment as to how that is balanced here? And also, I know that we have enough lawyers on the SAC.

STAFF DIRECTOR DANNENFELSER: Okay. I believe there is overall balance. The main objective of the balance is to -- under our administrative instruction is to ensure full and vigorous debate. We do not have quotas based on gender, race, and other categories of that nature, so we just do look for a balanced group of people who can provide vigorous debate on the issues that the Advisory Committee would address.

COMMISSIONER MELENDEZ: A question. I thought we were considering trying to get more women. And there is only three on this, my understanding, out of 13, is that right?

STAFF DIRECTOR DANNENFELSER: That's correct.

CHAIRMAN REYNOLDS: Mr. Staff Director, please describe the outreach that took place that resulted in these recommendations.

COMMISSIONER YAKI: Well, before he addresses that, I mean, whatever the outreach was, why is it that we have three people who all belong to the
same think-tank on the SAC? Lester Dutcher and Scaperlanda all belong to the Oklahoma Council of Public Affairs.

COMMISSIONER GAZIANO: And why is that necessarily a bad thing.

COMMISSIONER YAKI: Well, when you are talking about -- when you are talking about three out of 13, that hardly seems it would be -- hardly seems it would be any sort of representative balance on anything. I am not talking about party affiliations. I am not talking about the social clubs. I am talking about their professional capacities in a specific -- one specific organization. So, yes, I would have a problem with that --

COMMISSIONER GAZIANO: Are you saying their views on --

COMMISSIONER YAKI: -- Commissioner Gaziano. I would have a problem with the fact that two of them also happen to be members of the Oklahoma Branch of the National Association of Scholars.

COMMISSIONER GAZIANO: But are you suggesting that --

COMMISSIONER YAKI: Certainly, we can do better than picking three people from the same organization. And I would say that whether it was the
NAACP, MALDEF, or The Federalist Society.

COMMISSIONER GAZIANO: I am just asking you whether you assume that their views on civil rights issues are all going to be identical, because they have the same -- one of the same affiliations. Is that your view?

COMMISSIONER YAKI: I am not going to answer the question whether I -- I don't know who each of --

COMMISSIONER GAZIANO: I think that is a ridiculous --

COMMISSIONER YAKI: I do know, however, that if we are picking three people from the same organization out of 13, we can certainly do a better job than that.

COMMISSIONER GAZIANO: So if three of them happen to be --

COMMISSIONER YAKI: That is my point, Commissioner Gaziano.

COMMISSIONER GAZIANO: If three of them happen to be --

COMMISSIONER YAKI: Then, you know, it is not worth talking about it.

CHAIRMAN REYNOLDS: Commissioner Yaki, overall, it appears we have a diversity of viewpoints.
If our outreach was -- if it found --

COMMISSIONER YAKI: What is the definition of "diversity of viewpoints"?

CHAIRMAN REYNOLDS: -- then I am -- I am satisfied that we have a good -- we have a good list here.

COMMISSIONER YAKI: Well, of course you are satisfied. The diversity is all from your side of -- your side. So fine. I just told you, I just wanted to raise the point, and that I am going to be voting against it.

CHAIRMAN REYNOLDS: Understood.

COMMISSIONER YAKI: Move on.

COMMISSIONER GAZIANO: Well, for the record, I certainly think that one of the members of the -- one of the affiliations of three of the members is not -- does not represent their views and their lifetime knowledge of the area, and that that assumption certainly doesn't -- isn't very persuasive to me.

COMMISSIONER HERIOT: Remember that the Oklahoma Association of Scholars is -- these people don't work for that organization. They just happen to be members. You know, we have two people who are members of the Roman Catholic Church as well. You
know, it is one of many, many, many groups that they
probably belong to.

You know, I could see being more concerned
about there being several people, you know, from --
who all work for the same employer, but that's not the
case here. It's not even close to the case. My guess
is that if we were to examine these people more
closely, you will find indeed that, you know, three of
them are members of lots of different organizations.
There are probably three Presbyterians in there
somewhere.

COMMISSIONER YAKI: What is the Oklahoma
Council of Public Affairs? I know what it is. Would
you like to tell me what you think it is?

CHAIRMAN REYNOLDS: Well, what is the
point?

COMMISSIONER YAKI: Then, don't give me
this diversity boohoohoo. This is not diversity.

CHAIRMAN REYNOLDS: Well --

COMMISSIONER YAKI: Three out of 13
belonging to the same thing, five of the people all
overlap with one another in various settings. I
didn't know Oklahoma was that small a state, but I
guess it is.

CHAIRMAN REYNOLDS: Okay. Folks, this is
a debate that has been ongoing for quite some time. I am sure we will --

COMMISSIONER YAKI: Let's just vote.

Let's move on.

CHAIRMAN REYNOLDS: Very good. Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Abstaining on it.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: N-O.

CHAIRMAN REYNOLDS: And I vote in the affirmative. Okay. The motion passes.

Next up, I move that the Commission recharter the Mississippi State Advisory Committee. Under this motion, the Commission appoints the following individuals to that Committee based on the Staff Director's recommendation. Bradley Clanton, Victoria Cintra, John Czarnetsky, Goyo de la Cruz,

The Commission also reappoints Mr. Clanton as Chair of the rechartered Mississippi State Advisory Committee. These members serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER YAKI: This is Commissioner Yaki. I just wanted to note for the record that of the two SACs that we are appointing today only five out of 24 are women. And I will just note that without drawing any inferences on diversity or outreach. And let's vote.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: I vote yes on this.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Abstain. Only because I didn't have an opportunity to go through each of the biographies.

CHAIRMAN REYNOLDS: Commissioner Heriot?
COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Melendez?
COMMISSIONER MELENDEZ: No.

CHAIRMAN REYNOLDS: Commissioner Yaki?
COMMISSIONER YAKI: Ditto.

CHAIRMAN REYNOLDS: I vote in the affirmative. The motion carries.

I move to adjourn. Is there a second?

COMMISSIONER GAZIANO: Could I -- Mr. Chairman, I did -- I don't know if we inadvertently skipped the --

COMMISSIONER YAKI: I second. Call the question.

VICE CHAIR THERNSTROM: Second.

COMMISSIONER GAZIANO: -- the Staff Director's Report. I -- he may have had some items, and I just wanted to -- to actually commend him for something in the report. Did we skip that item in the agenda?

STAFF DIRECTOR DANNENFELSER: We did.

CHAIRMAN REYNOLDS: I'm sorry. Please
repeat --

COMMISSIONER GAZIANO: I think we skipped the Staff Director's Report in the agenda, and I wanted to hear his report and actually commend him.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIR THERNSTROM: I'd like to call the question and adjourn.

CHAIRMAN REYNOLDS: Okay. All in favor, please say aye.

COMMISSIONER HERIOT: No. We skipped an item on the agenda.

COMMISSIONER YAKI: Aye.

VICE CHAIR THERNSTROM: Aye.

CHAIRMAN REYNOLDS: Okay. Let's vote to table discussion of the Staff Director's Report. All in favor, please say -- is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: All in favor, please say aye.

(Chorus of ayes.)

Objections?

COMMISSIONER HERIOT: No.

COMMISSIONER GAZIANO: No.

IX. ADJOURN

CHAIRMAN REYNOLDS: Okay. I move to
adjourn. Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRMAN REYNOLDS: Commissioner Gaziano?

COMMISSIONER GAZIANO: If I've lost the motion to have the Staff Director, I'll vote yes, with the understanding that I would have liked to have heard it.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Given Commissioner Gaziano's statement, I vote yes also.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I'll vote no on the grounds that it is absolutely ridiculous that we skip the Staff Director's Report.

CHAIRMAN REYNOLDS: Commissioner Melendez?

COMMISSIONER MELENDEZ: Abstain.

CHAIRMAN REYNOLDS: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: I'm sorry?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: And I vote in the affirmative. The motion carries. Folks, have a good
day.

(Whereupon, at 11:05 a.m., the proceedings in the foregoing matter were concluded.)