The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C. at 9:00 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman
PATRICIA TIMMONS-GOODSON, Vice Chair
ROBERTA ACHTENBERG, Commissioner
GAIL HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
DAVID Kladney, Commissioner
KAREN K. NARASAKI, Commissioner
MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director
MAUREEN RUDOLPH, General Counsel

* Present via telephone
STAFF PRESENT:

PAMELA DUNSTON, Chief, ASCD
JENNIFER CRON-HEPLER, Parliamentarian
TERESA BROOKS
JOE D'ANTONIO
LATRICE FOSHEE
SEAN GOLIDAY
GERSON GOMEZ
ALFREDA GREENE
AYAN ISLAM
MARCLE NEAL
JUANDA SMITH
TAMIKA TUCKER
MORGAN TUFAROLO
MICHELE YORKMAN
DAVID MUSSATT, Director, RPCU
LENORE OSTROWSKY, Acting Chief, PAU
JOHN RATCLIFFE, Chief, BFD

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART
ALEC DUELL
AMY GRANT
JASON LAGRIA
CARISSA MULDER
ALISON SOMIN
KIMBERLY TOLHURST
IRENA VIDULOVIC
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(2:30 p.m.)

CHAIRMAN CASTRO: Okay, we're back in session. It is 2:30 p.m. Eastern time. We are now continuing with the business meeting portion of our briefing/monthly meeting. We already voted to approve the agenda and any amendments earlier in the day, so we'll just get right into it.

I. PROGRAM PLANNING

DISCUSSION ABOUT MOVING THE DECEMBER 16, 2016 BUSINESS MEETING TO DECEMBER 2, 2016

The first item on the agenda is a discussion and vote on the changing of the December 2016 business meeting to December 2nd, 2016. Reason being, when we set the dates on the calendar, we did not realize that two of us are terming off on December 5th, which would've been before the current meetings in December that we're scheduled to have. So by moving it to December 2nd, it allows myself and Commissioner Achtenberg, who are terming off on December 5th, to have the opportunity to participate in our last meeting with you all. So any motion on that?

COMMISSIONER ACHTENBERG: So moved.
CHAIRMAN CASTRO: Is there a second?

VICE CHAIR TIMMONS-GOODSON: Second.

CHAIRMAN CASTRO: Any discussion? None.

I think we do this by voice vote. All those in favor, say aye.

(Chorus of aye.)

CHAIRMAN CASTRO: Any abstentions? Any opposition? Okay, that one passes. Thank you. Was kind of concerned about that one. I wasn't.

**DISCUSSION AND VOTE ON UNIONTOWN TOWN HALL**

Next, we have a discussion and vote on a Uniontown town hall. I'll have the staff director speak to that initially. Mr. Staff Director?

DIRECTOR MORALES: Thank you, Mr. Chairman. Whoa. Thank you, Mr. Chairman.

CHAIRMAN CASTRO: My chair wasn't working today.

DIRECTOR MORALES: Even got myself excited there. Thank you. We -- I've sent a memo that I think all of you have seen, and I'd like to make a few comments before we have a discussion and entertain any questions you may have.

First of all, I'd like to say, you know, when we've, when this first got initially proposed, I think we got a little bit ahead of ourselves about
holding this town hall in Uniontown, Alabama.

Due to the weather and the heavy workload we had at the beginning of the year, we were only recently able to provide an on the ground assessment of what we're really facing in holding a town hall in Alabama.

And, at that point, when I -- when we did do the assessment, and I really want to thank Pam Dunston for going down there and Juanda Smith to really be on the ground, and to communicate with everybody that we would be involved with.

I don't think we really fully understood, you know, what we were facing. And basically, there were a lot more logistical challenges than we had anticipated, and that's in some regard to holding the entire commission, you know, meeting down there.

I don't think we fully understood or anticipated these logistical hurdles and the cost. The memo that I provided gives you a cost of about $38,000, and we've, since, subsequently anticipated or learned, might be additional $2,000.

So we're looking at about $40,000 to hold it down there. And it's not just the cost. You know, it's the logistical challenges.

So let me just say, additionally, our
State Advisory Committee in Illinois held a meeting on environmental justice. The State Advisory Committee in North Carolina's going to do the same.

And given the unique needs of the Commission, our limited resources, you know, we also have encountered an unanticipated and unexpected expenditure that we may have to make that we have to budget, and you know, and to avoid the further strain on our staff and our budget, I recommend and I ask that the commissioners consider to cancel the town hall in Uniontown, Alabama at this time.

CHAIRMAN CASTRO: Yes. Is there any discussion, commissioners? Commissioner Heriot?

Put your mic on, please. There you go.

COMMISSIONER HERIOT: Okay. I really hate the idea of not going to Uniontown. I feel like we're doing a report that, you know, one of the big features of it has to do with the landfill there in Uniontown. And so I'm not happy at all about the notion of canceling this. Can I ask what the unexpected expenditure is?

DIRECTOR MORALES: Well, it's, it isn't just one, there's several. The fact that Uniontown, Alabama is about an hour and a half away from a major city --
COMMISSIONER HERIOT: I don't mean, I don't mean the money dealing with Uniontown, but I thought that you had mentioned that something was coming up that --

DIRECTOR MORALES: Oh, yes. There was additional cost for the -- I believe it was the court reporter, and then, you know, I think some additional, again, I mean, I can ask Pam.

But there was like about $2,000 anticipated in addition to the 38,000. Isn't that correct? No? I'm wrong? Okay, then I'm wrong.

Then it's 30 -- well, no, no. That's a different issue. That's a different issue. I'm talking -- she's asking about the additional $2,000 we --

COMMISSIONER HERIOT: No, I thought, I thought there was something that was unrelated to Uniontown that you thought --

DIRECTOR MORALES: Oh, yes, yes, yes. Well, we may have to look at -- we just received a letter from a congressional office in regards to an inquiry as to an audit, and we may need to revise the audit. And so there's, that could be fairly expensive.

So we don't know. We're in the process.
of assessing it. We're in process of communicating with the committee and with our staff here, and so that's the unanticipated cost. I'm sorry. I misunderstood you.

COMMISSIONER HERIOT: Okay. But the thing is my understanding was that our report is supposed to feature this landfill in Uniontown rather prominently.

And it strikes me as wrong to be writing about that without there having been some formal, or at least informal, procedure under which we, like, actually see it.

CHAIRMAN CASTRO: Yes. Let me suggest something. I know that some of us have been talking amongst ourselves as to, you know, what we were thinking about, but there is maybe another way, and that is perhaps a smaller contingent of us, perhaps you and Commissioner Yaki could go down as fact finders.

Maybe not do the full-blown town hall, but conduct some interviews, view the site, you know, get some additional data so that there is that.

COMMISSIONER HERIOT: Here's another problem with that. I may not be able to go at the
same time that Commissioner Yaki does. Would it be possible for us to go separately?

CHAIRMAN CASTRO: I don't know.

DIRECTOR MORALES: I'm going to ask general counsel to opine. We've looked at this, and there still would be a significant cost of about -- if we had to get staff and our commissioners, and down there, and we're still looking at a cost of about $9,000 to $10,000, even to do two commissioners. But I'm going to have the general counsel opine on this.

GENERAL COUNSEL RUDOLPH: Thank you. First, I just want to clarify one thing about the report and what the report is focusing on. The report is focusing on EPA.

That is what the concept paper has instructed us to look at, which is the EPA's -- we're doing a statutory enforcement report about the EPA.

How heavily, or how prominently the Arrowhead Landfill factors into that report, I think is, I just want to clear that up, but I'm not sure that, I want to make sure that we understand that we're not focusing on the Arrowhead Landfill here.

Second, with regard to the commissioners
traveling sort of for the Commission down, the regulation does speak to when commissioners are conducting business, the regulation on 702.52 states that commissioners shall not jointly conduct or dispose of agency business, other than in accordance with this subpart.

And the subpart is the part that specifically speaks to meetings. The reason that I'm bringing this to everyone's attention is that there is the possibility under the regulation for a subcommittee. And that is spelled out. As referenced in our statute it would have to be one of each side, and these other types of things.

However, if we're talking about proceeding under the regulation as a meeting, then all of the other things sort of come into play in terms of transcription, in terms of all of these, all of the things that are required for our meetings that are set out in the regulations.

COMMISSIONER HERIOT: Okay. What if, what if a subcommittee is appointed, and the subcommittee is, you know, bipartisan or whatever, and part of that is simply going to the landfill and getting the tour. Not a meeting, but just
getting the tour. Much like we did for the detention centers. You know, obviously when we visited the immigration detention centers, we did not post in the Federal Register that we were doing that.

It's just a fact finding mission. It's not a meeting. Nobody's invited. It's basically the detention center visit all over again, except for we end up going on different days. Does that work?

GENERAL COUNSEL RUDOLPH: I think that, in that case, you know, this sort of idea of a site visit, that yes, you could, you could vote to do that. That would not necessarily be, you know, conducting or disposing of the Agency business in the manner that you're, that you're referring to.

CHAIRMAN CASTRO: Ask her. Go ahead, Commissioner. You had a question? The microphone there, Commissioner.

COMMISSIONER ACHTENBERG: Why can't you go on the same day?

COMMISSIONER HERIOT: I'd be happy to tell you that confidentially.

COMMISSIONER ACHTENBERG: Oh, okay. Did we set the date?

COMMISSIONER KLANDNEY: If I can, Mr.
CHAIRMAN CASTRO: Yes, sir.

COMMISSIONER KLANDNEY: I was very hesitant to vote for this in the first place.

CHAIRMAN CASTRO: Vote for what?

COMMISSIONER KLANDNEY: Even going.

CHAIRMAN CASTRO: Oh, the bigger --

COMMISSIONER KLANDNEY: To Uniontown.

CHAIRMAN CASTRO: Yes.

COMMISSIONER KLANDNEY: And it was really interesting, because getting a tour of the landfill now is really meaningless in the sense, just in the sense that they're not accepting coal ash now.

And the coal ash that they have accepted, they have put in the ground, they have covered up, which is what a landfill is supposed to do, and planted grass on top.

So I don't know what we're going to see if we go, either individually or two or five or however many go, that you couldn't see in photographs of green grassy fields.

You're not going to see an operation where coal ash is being brought in on rail cars, being trucked to the landfill and dumped in, the operation
itself.

There is no coal ash operation there now. So I don't know what the benefit of that is. I thought that we accepted quite a bit of testimony from them, which -- where they spoke about observing all the regulations in the state of Alabama, and that kind of thing.

What was interesting is I spoke with the gentleman who was president after we broke that session, and he -- I asked him, I said -- because the question I asked was about the wells, monitoring the wells.

And I said, so how many wells do you monitor? And he says, two. He says, that's the state requirement. And we drill our own wells, and we monitor them.

So, if they're complying with the state regulation, and they're not accepting coal ash, and there's nothing to see but a regular landfill, you're just looking at a landfill, and I don't know if it's worthy for us to do that.

I know that at the time we voted on this, there seemed to be, the people had something to say, and I thought that lady who was our witness here was
an excellent witness for the community.

   So I am of the opinion that we shouldn't go, and if the landfill wanted to submit photographs, they can submit photographs, which would be just as good as going there, and it would be, actually, photographs that their PR department can put together and give to us.

   So I'm going to make a motion that we cancel Uniontown and move onto our regular schedule.

COMMISSIONER HERIOT: My understanding is, if I'm remembering correctly, that there was testimony that coal ash is still blowing around.

   And that is something that can be seen when one goes there. Is there coal dust blowing around or is there not? It may not be perfect, but it makes a lot more sense than simply accepting that testimony.

COMMISSIONER KLANDKEY: Karen?

CHAIRMAN CASTRO: Commissioner Narasaki?

COMMISSIONER NARASAKI: So I had also somewhat reluctantly voted for it at our last meeting, more because I felt that we had set an expectation for the community who wanted to have an opportunity for members of the community to talk to the
commission. The original point, I thought, of going to Uniontown was the town hall, and not so much to see the site itself, for the reasons that Commissioner Kladney laid out.

So I was supportive of the thought of having a subcommittee go down, because I feel we did create this expectation, and would want the community to be able to feel respected and heard.

But if I understand the General Counsel correctly, if all you can do is go take a tour of the facility, and not actually talk to the other members of the community who clearly have a different view than the people who operate the landfill, then I feel that's actually worse than, you know, because then it's a very one-sided visit.

Am I understanding you correctly that they would not be able to meet with other members of the community because we need to have a court reporter there?

GENERAL COUNSEL RUDOLPH: That's correct, Commissioner Narasaki. What I'm saying is that, pursuant to our regulations, for the subcommittee to go down and hold the town hall, they would need to comply with all of what's in our
regulation for a business meeting, including the requirement of a court reporter.

COMMISSIONER HERIOT: What if it were not a town hall, but simply speaking to people in the committee informally?

You know, walking into a store and saying, hey, what do you think about this? You know, what do our rules do for that?

Because in a sense, you know, even visiting the site, you're collecting facts. You're not inviting facts from everybody, you're collecting facts. Is it prohibited to collect facts outside of a town hall?

I mean, for instance, for the briefing today, if I were to telephone, you know, my friend who's a judge in a municipal court, not that I have such a friend, but if I did, and say, we had a bunch of witnesses who testified blah, blah, blah, blah, blah.

And, you know, what do you think? You know, what's the procedure at your court? We don't have a rule that says we can't collect facts informally, do we?

GENERAL COUNSEL RUDOLPH: I'm sorry, you
mean in terms of collecting facts informally, then bringing it back to everyone? Or are you talking about having that person submit to the public comment process?

COMMISSIONER HERIOT: You know, I'm curious, you know, how are we conceptualizing this? If I were to call my hypothetical friend who has some knowledge of what we talked about today, do I have to then tell him, well, you need to put that in writing and submit it as a public submission?

Or can I come back and during the meeting where we're discussing the draft of the report, say, well, you know, Judge so and so, who has some knowledge of this issue, told me blah, blah, blah, blah, blah.

GENERAL COUNSEL RUDOLPH: Well, I think that in terms of information collecting, you're free to collect information and bring it back to the rest of the Commission.

Whether that can be cited to, or how we, you know, how we -- what we do with that information in terms of how we use it in the report, is something that is also up to all of you.

COMMISSIONER HERIOT: Well, but we don't
have any rule that facts that are collected have to be on the record. I mean, this isn't a court.

You know, we're more like a legislature in that respect, and so, you know, members of legislatures contribute legislative facts, as they call them, all the time.

You know, just like we have a report, you know, where the staff members pull things off the Internet that weren't part of the hearing.

It can't be that a staff member can pull things off the Internet, but a commissioner can't speak to somebody. And, you know, can't get into the report unless there's been, like, notice and such. So it seems like we're off kind of in an odd world here.

CHAIRMAN CASTRO: Can I say something? I, without opining on whether we're legislative or executive, I mean, I don't --

COMMISSIONER HERIOT: Legislative or judicial for the purposes of fact finding. I'm not talking about the issue that --

CHAIRMAN CASTRO: Okay, well, I'm not suggesting, without opining on the legislative issue, how's that?
You know, it seems to me that what Commissioner Heriot is asking for is virtually identical to what we did when we went down to the detention centers, but smaller in that we're not even going to have all, a quorum of commissioners, which we did have when we went down to the detention centers.

And we did speak to folks there. We spoke to people from ICE and from GO and the detainees. We spoke to some folks from the nonprofit world, and we brought that data back, and some of it made it into the report.

Granted it was, you know, under a different -- I think, well you weren't, not general counsel at the time.

COMMISSIONER KLADNEY: No, I don't think anybody was --

CHAIRMAN CASTRO: Yeah. So, but having said that, so under the scenario, do you see an equivalence there or is it, is there an issue?

GENERAL COUNSEL RUDOLPH: What I want to be clear about and what I think I was being asked was, to the extent that there is some sort of public town hall, then that would require that what is set
out under our regulations in terms of documentation
of that gathering with -- as it's set out in our
regulations.

CHAIRMAN CASTRO: Okay.

GENERAL COUNSEL RUDOLPH: I want to
contrast that to a site visit, which I had said, you
know, does seem to fall outside of that, even though
one could argue as Commission business, but it does
seem to be in a different category.

The question I was being asked about,
well, what if we, you know, talk to some people sort
of around town kind of thing. I don't think that
there's necessarily a prohibition on that from the
sort of how we document that and how that makes it
into a -- into our report. I think that that
raises a different question about how we document our
information collection, which is not necessarily tied
to what's under our regulation about holding a meeting
or a town hall, or a site visit for that matter.

So I think they are a little bit
different. And I hope that that answers that
question.

CHAIRMAN CASTRO: Okay.

COMMISSIONER HERIOT: I'm happy.
CHAIRMAN CASTRO: Okay. Good. I want to make sure we're all on the same page then. Commissioner Kladney, you had a motion? We're waiting --

COMMISSIONER Kladney: I made the motion.

CHAIRMAN CASTRO: We're waiting for a second, I believe.

COMMISSIONER Heriot: What was the motion?

CHAIRMAN CASTRO: Would you repeat it please?

COMMISSIONER Kladney: The motion was that we cancel the journey to Uniontown to either to take a tour and have a town hall, whatever we had approved in the last meeting. That's my motion.

CHAIRMAN CASTRO: Was there a second?

COMMISSIONER Narasaki: I second, I assume there's going to be a subsequent motion?

CHAIRMAN CASTRO: Depends on how this one goes, right? Is there any discussion? Additional discussion?

CHAIRMAN CASTRO: Pardon me?

COMMISSIONER Narasaki: So I assume there's no visit?
CHAIRMAN CASTRO: Okay, well, we'll take

a vote on this motion then. Commissioner Kirsanow,

how do you vote?

COMMISSIONER ACHTENBERG: Mr. Chairman,

a point of information --

CHAIRMAN CASTRO: Yes.

COMMISSIONER ACHTENBERG: Does this imply or address specifically whether or not any commissioners will -- would be going to Uniontown, or is this just on the issue of canceling the --

COMMISSIONER Kladney: I think procedurally I'm --

CHAIRMAN CASTRO: We're going to cancel the town hall.

COMMISSIONER Kladney: -- canceling the town hall.

CHAIRMAN CASTRO: What we voted to do last time. Right.

COMMISSIONER Kladney: In the last meeting.

CHAIRMAN CASTRO: So he's seeking to undo what we did at the last meeting.

COMMISSIONER ACHTENBERG: Okay. And then whether or not commissioners were to go to
Uniontown is a different --

CHAIRMAN CASTRO: And yes, right.

Depending on how that goes, if a commissioner wants to make her motion --

COMMISSIONER ACHTENBERG: Thank you.

GENERAL COUNSEL RUDOLPH: Yes, that's right.

CHAIRMAN CASTRO: Then she'll make her motion. Right.

COMMISSIONER NARASAKI: That was my comment that I was assuming there was another motion coming.

CHAIRMAN CASTRO: Right. Right. Okay?

COMMISSIONER NARASAKI: Though I don't know how to vote on this one.

CHAIRMAN CASTRO: Well, me either. So let's figure it out as we go along. Commissioner Kirsanow, how do you vote?

COMMISSIONER Kladney: Commissioner Kirsanow is not voting.

CHAIRMAN CASTRO: Oh, that's right. I'm sorry. You recuse yourself. Commissioner Heriot?

COMMISSIONER HERIOT: I guess, I vote no.

CHAIRMAN CASTRO: Okay. Commissioner
Narasaki, how do you vote?

COMMISSIONER NARASAKI: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, are you participating? No, he's not. Madame Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: And I vote yes. So we have one, two, three, four, five yeses. And a no. So the motion passes. Is there another motion?

DISCUSSION AND VOTE ON APPOINTING A SUBCOMMITTEE TO GO TO UNIONTOWN

COMMISSIONER HERIOT: Yes, Mr. Chairman, I move that the Commission appoint a subcommittee consisting of, I guess, Commissioner Yaki and me, and authorize them to go to Uniontown to inspect the landfill, and to -- well, to at their discretion, choose to do so.

So we would not necessarily do so if we
could be convinced that that's a bad idea. But I just move that we appoint that subcommittee and allow that subcommittee to go to Uniontown.

CHAIRMAN CASTRO: Is there a second?

VICE CHAIR TIMMONS-GOODSON: I have --

CHAIRMAN CASTRO: Go ahead, do you have a question?

VICE CHAIR TIMMONS-GOODSON: I had a question.

CHAIRMAN CASTRO: Go ahead.

VICE CHAIR TIMMONS-GOODSON: And so --

CHAIRMAN CASTRO: Turn your mic on.

VICE CHAIR TIMMONS-GOODSON: Thank you.

So is the subcommittee limited to what you just said, which is going and inspecting the --

COMMISSIONER HERIOT: I think we would not want to hold the town hall under those circumstances.

CHAIRMAN CASTRO: But you will want to talk to people informally.

COMMISSIONER HERIOT: I mean, I wouldn't anticipate anything that would be formal other than speaking to people who might happen to be standing in front of us.
CHAIRMAN CASTRO: Okay. Is there a second to the motion? Do we have a second? I'll second it for you so that we can have a discussion. Any discussion? No? We'll call the question --

COMMISSIONER HERIOT: I don't think I need to say anything that I hadn't already said.

CHAIRMAN CASTRO: Right. Okay.

COMMISSIONER NARASAKI: Wait, wait. No.

CHAIRMAN CASTRO: Oh, you have something to say? Okay, I thought you were just smiling at me.

COMMISSIONER NARASAKI: No, I turned my thing on. I thought you smiled back.

CHAIRMAN CASTRO: I did because you smiled at me. I try to be polite.

COMMISSIONER NARASAKI: We're smiling at each other. Yes, I would like to speak. Thank you, Mr. Chairman.

CHAIRMAN CASTRO: Go ahead.

COMMISSIONER NARASAKI: So Mr. Chairman, you were talking about the example of the detention center and there at the detention center, in addition to talking to the DHS and ICE officials, we also got to talk to the detainees. So I felt that that was
a, you know, we were able to get a well-rounded viewpoint, shall we say. A diverse viewpoint.

I'm concerned about sending people down just to talk to the company who already testified. I just don't know, I feel like that does not seem fair to the community members who are there, and who will already be disappointed that we canceled the town hall.

I'm concerned about the community feeling, I think, disrespected and unheard. So I'm a little concerned about not being able to work out a visit because that enables the subcommittee to talk to more than the company.

And maybe it's something that the subcommittee could work out with counsel about what could be done, but if it's just that all they're going to do is to meet with the company, then I would have to vote no, and I don't necessarily want to. So I'm looking for help.

COMMISSIONER HERIOT: Well, let's see. We could have a motion that says that we will do this, but only if we can work out, to the satisfaction of the general counsel, the chairman and the subcommittee members that we will be able to talk in
some way to -- I don't know if we're getting too complicated here.

CHAIRMAN CASTRO: We probably are, but I think it's probably worthwhile so that folks know how they can vote. So that's your -- you want to change your motion, I'll accept that change.

COMMISSIONER HERIOT: Okay. The motion would be, we appoint a subcommittee. The subcommittee goes down and takes a tour.

The subcommittee also, in conjunction with the general counsel, do you want it to be the staff director, or you, Marty, or what?

CHAIRMAN CASTRO: The general counsel's fine. I think if you do that before you go down there, right?

COMMISSIONER HERIOT: Okay. We won't do it unless we're sure that the general counsel thinks that we can talk to people down there in a way that doesn't trigger expensive procedure, but doesn't leave us in the situation --

CHAIRMAN CASTRO: Yes.

COMMISSIONER HERIOT: That we are only doing the tour --

CHAIRMAN CASTRO: Right.
COMMISSIONER HERIOT: -- and not speaking
to nobody.

CHAIRMAN CASTRO: Right. Okay.

COMMISSIONER NARASAKI: I appreciate that.

CHAIRMAN CASTRO: I accept that change.

I second that change. So any other questions or discussion?

COMMISSIONER ACHTENBERG: Yes, I'm going to --

CHAIRMAN CASTRO: Yes, Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes, I'm going to vote against the motion. I think it seems to me to be the worst of all possible worlds that we've now created.

I was in favor, originally, of going down there in full force, doing it right, you know, both visiting the site and having a community meeting. If we're not going to do that, then it seems to me we are canceling -- so the community's going to be disappointed.

We don't have enough, I mean, you'll take a tour of the site, and some form of fact finding,
I'm hearing our general counsel say, actually can't take place, although some anecdotal kind of inquiry of community members perhaps could take place.

It's getting too nuanced for me. I think the wrong message, therefore, will be being sent. And I'm not -- I don't think that's the way to go.

So if we're not going to have the full Monty, which is what I was originally in favor of, I don't think we should, I think we should just cut our losses right here. So I'm going to vote no.

CHAIRMAN CASTRO: Any other comments before I call it for vote? Commissioner Kladney?

COMMISSIONER KLADEY: Mr. Chairman, I believe firmly that the landfill is no longer accepting coal ash, and there -- no one ever, I don't believe anybody testified there's coal ash still flying around down there.

It's my understanding that the testimony was, is when the trains pulled in and unloaded the coal ash, that it blew around and blah, blah, blah.

During our briefing, I had said something that I had not been able to read their general counsel's statement because it had arrived the night before.
They had tweeted out, well, Commissioner Kladney, you should read it, which I thought was fine, but then they attached a photograph of the landfill during that, which was what a landfill should look like with grasslands that was completed.

That they weren't accepting any more coal ash. And I believe they testified to that during the hearing too.

So I don't see what you're going to see at the landfill outside of a landfill that's not accepting coal ash. So I'm going to vote no as well.

CHAIRMAN CASTRO: Okay. Any other comments? I'll take a roll call vote. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I vote yes.

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: I vote yes.

CHAIRMAN CASTRO: Commissioner Kladney, you vote no?

COMMISSIONER KLADNEY: Yes, sir.

CHAIRMAN CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: No.
CHAIRMAN CASTRO: Commissioner Yaki, are you on the phone? All right. Madame Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: No.

CHAIRMAN CASTRO: And I vote yes, so we have one, two, three yeses, and three noes. So I guess the motion fails. Let me make sure I got that right. Yes. Three yeses and three noes. All right. So the motion failed. Okay. We'll move onto the next item then.

DISCUSSION AND VOTE ON THE NATIONAL VOTER REGISTRATION ACT REPORT AND FINDINGS AND RECOMMENDATIONS

The discussion and vote on the NVRA report, and as well as findings and recs. We'll take these as separate, part A and part B, part A being the report.

Hopefully folks have had a chance to review this for the umpteenth time. Do I have a motion?

COMMISSIONER NARASAKI: To move the acceptance of the report?

COMMISSIONER KLADNEY: I so move.

CHAIRMAN CASTRO: Is there a second?

COMMISSIONER NARASAKI: I second subject to some changes.

CHAIRMAN CASTRO: Okay. What are those changes?

COMMISSIONER NARASAKI: So we have sent this around to staff and the special assistants, and there's two places in the draft.

One is a fairly minor change that's in the findings on pages two and three, and also get repeated on 47, and it's talking about the integrating voting -- voter registration procedures. And instead of using the word technology on its own, we would say, we would change it to integrated computerized processes. And then in the second bullet, instead of technology alone, data management technology instead of just technology. So we're just trying to be more specific. I assume that there's no objections to that.

The second set of changes are in the introduction, pages five through seven, ensuring the right to vote for all, and what we did there is basically shortened the discussion, and I thank
Commissioner Heriot and her staff for working with me
and my staff to try to come up with a shorter
historically accurate, technically accurate
paragraph. And so you should all have that.

But basically, what we're doing is we're
striking the first paragraph that was there. We're
starting the second paragraph, we're eliminating,
since that time.

We start with, the struggle to expand the
right. The second sentence, we're adding a sentence,
following the Civil War, the United States passed the
Reconstruction Amendment to the Constitution
including the 15th Amendment, which -- and this is a
change from what we circulated -- instead of, which
ended limitations, it says, which prohibited
limitations on, instead of male, we strike that and
just say, on suffrage based on race, color, or
previous condition of servitude.

We strike, for example, and then we
strike the sentence beginning with the Indian
Citizenship Act and then we're striking the third
paragraph following the Civil War.

And in the bullets, we're also striking
the related footnotes. And then in the bullets, in
the second bullet that starts, authorizes federal
registration of voters where local registrars we're
substituting, for fail to open, we're substituting,
denied the right to vote on account of race or color
and we're striking voter registration to African
Americans.

CHAIRMAN CASTRO: Commissioner Kladney,
are you okay with those changes to your motion?

COMMISSIONER KLASTNEY: Yes, I am. I'll
accept.

CHAIRMAN CASTRO: Okay. So we have a
motion and a second for the report as outlined in
these amendments here.

Any discussion? Hearing none, I will
take a roll call vote. Part A, the national voter
registration act report. Commissioner Kirsanow, how
do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot,
how do you vote?

COMMISSIONER HERIOT: I vote, yes, on the
ground of we really need to get a report out.

CHAIRMAN CASTRO: Commissioner Narasaki,
how do you vote?
COMMISSIONER NARASAKI: I vote yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRMAN CASTRO: Madame Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Recuse.

CHAIRMAN CASTRO: Oh, really? Okay. Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, are you on the phone? Oh, okay. And I vote yes. So the motion passes. One, two, three, four, five, six yeses and one recusal. Okay.

Now we go to part B, which are the findings and recommendations. Do we have a motion on that, subject to the change that was outlined by Commissioner Narasaki a minute ago on the findings and recs? Is there a motion?

COMMISSIONER Kladney: I'll move to accept part B of the report.

CHAIRMAN CASTRO: Okay.

COMMISSIONER ACHTENBERG: I'll second.

CHAIRMAN CASTRO: Any discussion?
Hearing none, I'll take a roll call vote.

Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: No.

CHAIRMAN CASTRO: I thought we were going to continue all these yeses today. Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: A disappointed yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLANDNEY: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, are you on the phone? No? Madame Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Recuse.

CHAIRMAN CASTRO: And I vote yes. That's one, two, three, four yeses, two noes and a recusal. So the motion passes, is that right? Yes. Okay.
So part B and part A have just passed. Do we need to set a time to put in commissioner's statements?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: So what is the schedule for that? Is there a proposed schedule?

GENERAL COUNSEL RUDOLPH: I believe it's 30 days from today for statements, and then 30 days after that for rebuttal.

CHAIRMAN CASTRO: Okay. Everybody clear on that? Good? All right.

II. MANAGEMENT AND OPERATIONS

DISCUSSION AND VOTE ON FOLLOW-UP

LETTERS ON ISSUE OF DENIAL OF BIRTH CERTIFICATES TO U.S. CITIZEN CHILDREN IN TEXAS

Then we'll move on to the next item, is a discussion and vote on a follow-up letter on the issue of Texas denying birth certificates to U.S. citizen children of undocumented aliens.

Sorry for having distributed that so late, but in essence, it's a follow-up on the letter that we sent in July, actually sent two letters in July, one to Texas asking them to cease and desist their failure to issue these birth certificates and begin to issue them.
And then we also asked the Department of Justice to conduct an investigation. We've not received a response to either of those letters, but in the interim, private parties have commenced litigation in Texas.

And because there are some federal issues that are involved with that, this letter requests that to the extent possible, the justice department intervene in that case, or mediate that case and we're making that request to DOJ. So that's the tone of the -- the summary of the letter. I'll make a motion I guess. Does anyone second that?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Okay. Any discussion? Hearing none, then I will take a roll call vote. Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: For the reasons that I voted I think on the previous stuff, no.

CHAIRMAN CASTRO: Yeah. Okay. Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: Yes.
CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, you on the phone? No? Madame Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Recuse.

CHAIRMAN CASTRO: Okay. And I vote yes. The motion passes with one, two, three, four yeses, a recusal, and two noes. Thank you all.

Also just to authorize staff to put together a press release according to the -- once the letter is issued as we've done with other letters.

**DISCUSSION AND VOTE ON LETTERS**

**TO THE U.S. DEPARTMENT OF EDUCATION**

**AND THE UNIVERSITY OF CONNECTICUT**

Next on the agenda, there are two letters that have been circulated by Commissioners Kirsanow and Heriot. One to the U.S. Department of Education and the other to the University of Connecticut.

Would one of you like to take the lead on
explaining that or making your motions?

COMMISSIONER HERIOT: We actually read in the paper the University of Connecticut has essentially dedicated a dorm to African American males, or the study of African American males.

Originally, they were quoted as saying that they would give preference to African American men to be members of this house at the University of Connecticut. They subsequently removed that sentence from their Web site. But, nevertheless, it's quite clear that even if they have changed their intent, the effectiveness will be to promote racial isolation on campus.

Frequently the argument made for racial preferences on campus is that we need to have more diversity on campus. I think this lessens the ability of students to interact with each other, and I think it's to the detriment of all.

I would like to see us send a letter either exactly as Pete and I have proposed, or very close to that.

COMMISSIONER KIRSANOW: It's true, but I'll still make a statement. It strikes me -- I respond to or make a comment similar to what
Commissioner Heriot said, maybe a little stronger.

My view is that the initial statement was clearly at odds with Grutter v. Bollinger, and the purported educational benefits that derive from a diverse student body.

What educational benefits can you get from a diverse student body in which they've articulated for, and one of them was breaking down racial stereotypes and promoting cross-cultural understanding. But we're segregating individuals into one area of the campus for at least eight hours, probably, of their existence on campus per day.

And that's fundamentally at odds with what the compelling state interest that Grutter found in order to justify racial preferences in admissions.

In addition to that, it harkens back 40 or so years when we started having these segregated dorms at college campuses, mainly in response to the number of instances, incidents at my alma mater, for example, or others.

And I don't think there has ever been any evidence produced, any empirical evidence that those dorms produce anything other than ghettoized environments at college campuses.
If we're going to promote cross-cultural understanding, I think that this is just completely antithetical to that endeavor.

CHAIRMAN CASTRO: Is there any additional discussion? Anybody? Not, then I will call the question for a vote.

So we'll take both letters together then? Let's see. Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: Well, I'm sympathetic to the direction of the letter, I'm concerned about the tone and some of the substance of it, so I vote no.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLANDNEY: No.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.
CHAIRMAN CASTRO: Madame Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Recuse.

CHAIRMAN CASTRO: And I vote no. So it's one, two yeses, four noes and a recusal, so the motion fails. Next, we move on the management operations and the staff director's report. Mr. Staff Director?

DIRECTOR MORALES: Thank you, Mr. Chairman. I'll just be real brief here. I just --

CHAIRMAN CASTRO: I'd like to, I'm sorry. There's one thing I did forget. I skipped over a very important item.

DISCUSSION AND VOTE ON ADMINISTRATIVE INSTRUCTION

Commissioner Kladney has a motion, or he has proposed an administrative instruction, which we added to the agenda today. So I'll let you speak to that, then we'll get to the staff director's report.

COMMISSIONER KLADNEY: Thank you, Mr. Chairman. This AI is called proposed administrative instruction 1-24, and it has to do with voting procedures for documents other than reports.

 Basically it requests that all documents that'll be brought before a meeting be distributed a
week before -- optimally be circulated a week before
the Commission meeting, but no more than 48 hours,
and if it's submitted less than 48 hours, if one
commissioner objects, just like our --

COMMISSIONER NARASAKI: What do you mean, no less?

COMMISSIONER KLADNEY: No, less -- right.
It be submitted, it be submitted to us no less than
48 hours.

CHAIRMAN CASTRO: Why don't you just --
why don't you just read it what it says?

COMMISSIONER KLADNEY: Maybe I should just read it.

CHAIRMAN CASTRO: Yes. Sure.

COMMISSIONER KLADNEY: The purpose of this administrative instruction is to establish voting procedures for written documents other than reports presented for adoption by the Commission.

Section 2, Policy. Commissioners will have an opportunity to review any proposed document before it is submitted for vote at the Commission meeting.

Section 3, Procedure. Optimally, a proposed document will be circulated to all
commissioners seven days in advance of a meeting. A
document must be presented to all commissioners at
least 48 hours before a vote is taken at a meeting to
adopt the document.

Two, if a proposed document is not
presented to all commissioners at least 48 hours in
advance of the vote, a commissioner may object to
voting on the matter, and the vote may not be taken
until 48 hours after all the commissioners have
received the document.

CHAIRMAN CASTRO: That's your motion.
Is there a second?

COMMISSIONER HERIOT: Second.

CHAIRMAN CASTRO: Any discussion? Do I see a hand over there? No? Any discussion? All right. I'll take a roll call vote. Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Narasaki, how do you vote?

COMMISSIONER NARASAKI: Yes.
CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADE: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Madame Vice Chair, how do you vote?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIRMAN CASTRO: I vote no. Just because --

COMMISSIONER KIRSANOW: Just because you want to.

CHAIRMAN CASTRO: Optimal's kind of vague.

COMMISSIONER KIRSANOW: What happened to bipartisanship, Mr. Chairman.

COMMISSIONER HERIOT: I was thinking we'd get a unanimous vote today.

COMMISSIONER KIRSANOW: Come on, come with the winning side.

CHAIRMAN CASTRO: Oh, now you're going to -- no you're going to bully me into voting. Okay, so I'll vote yes so that we're unanimous. All right?
Don't say I never did anything for you.

So it's a unanimous vote. The AI passes.

So now, Mr. Staff Director, you have the floor.

**STAFF DIRECTOR REPORT**

DIRECTOR MORALES: Thank you, Mr. Chairman. As I had mentioned, I'll keep it brief. You have the staff director's monthly report. What I'd like to call out is attention to two items.

One is that pursuant to why, that I mentioned last month that we were putting out the vacancy announcement for communications on public engagement staff, fill that position.

The vacancy announcement closes on Monday, and so we have about, I think 16 to 20 applications we're going to go through and hopefully by next April's business meeting, we'll have that position filled.

I just want to, you know, acknowledge Gerson Gomez's assistance in helping us get our press releases out, and our communication. We really appreciate the great job you've done. He's been an enormous benefit for all of the commission, and so I wanted to, you know, publicly acknowledge that.

In addition, as you're aware, last month
you had requested a letter to go out regarding a
priority council to all children.

And then the request was that each
individual member of Congress get that letter, so
that's 400 and, 435, but --

CHAIRMAN CASTRO: Plus the hundred
senators?

DIRECTOR MORALES: Speaker, yes. Yeah.
Yeah, you're right. Counting senators, 535. But
speaker Boehner's position, or his congressional
office hasn't been filled yet.

And so anyway, the line is that it took
us a couple of weeks, no, it took us about a week,
I'm sorry, to get it all together. But I really
wanted to shout -- do a shout-out to the interns --
Joseph, Joe, Ayan, and Morgan, who stepped up and
helped our staff. And our staff was Alfreda Greene
and Gerson Gomez, and then the special assistants, of
course, that were instrumental in getting the letter
out as well, and helping us finalize it, was of
course, Amy and Irena. So I just want to acknowledge
all that to the commissioners, and thank them for the
great job and show of good team effort, so thank you.

COMMISSIONER KLADEK: And I would like
to add my thanks to that. I know it was a big job, and I think it was very important. Thank you.

CHAIRMAN CASTRO: Thank you.

DIRECTOR MORALES: That's all I have.

CHAIRMAN CASTRO: Any questions for the staff director? Yes, Commissioner Narasaki?

III. STATE ADVISORY COMMITTEES (SACS)

COMMISSIONER NARASAKI: Not so much a question, but I just want to highlight a concern about the fact that we have an increasing number of SACs that need to be filled.

And I know that the staff director is working with staff to come up with a new AI process around it, and I do appreciate that, and but I just want to note that I think that this is something that we should try to focus attention on over the next two months, and try to close the gap here. Because as I read the report, out of 51 committees, 17 have expired.

CHAIRMAN CASTRO: It's actually not as bad as I thought. We, as you know Commissioner Narasaki, there is a proposal that's currently circulating to commissioners.

We would've voted on it today, but the
staff director wanted, and I agreed, that we should
ask commissioners, even though it was bipartisanly
drafted by our delegates. We wanted to give
commissioners an opportunity to review that before we
voted on it. So that's the reason we're not dealing
with it today.

    DIRECTOR MORALES: And to that end, Mr.
Chairman, I've had conversations with Commissioner
Kladney and Commissioner Heriot, and they've provided
some really helpful input.

    We're going to, you know, drill down a
little bit more on it, and I'll work with all your
special assistants.

    I've had a meeting with them about it,
and we're looking to -- I think we're making some
really good progress with it, and hopefully by the
April business meeting I'll have more information
provided to you.

    And we're -- in the interim, we're going
to work on getting several of these state advisory
committees up and available for your vote next month.
So thank you.

IV. ADJOURN MEETING

    CHAIRMAN CASTRO: Anything else? If
not, it is now 3:22 and we are officially adjourning
the meeting. Thank you everybody. See you next
month.

(Whereupon, the above-entitled matter
went off the record at 3:22 p.m.)