UNITED STATES COMMISSION ON CIVIL RIGHTS

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TELEPHONIC MEETING

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THURSDAY

OCTOBER 8, 2009

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The Meeting convened telephonically, pursuant to notice at 5:15 p.m., Gerald A. Reynolds, Chairman, presiding.

COMMISSIONERS PRESENT:

GERALD A. REYNOLDS, CHAIRMAN

PETER N. KIRSANOW, COMMISSIONER

ASHLEY L. TAYLOR, COMMISSIONER

GAIL HERIOT, COMMISSIONER

TODD F. GAZIANO, COMMISSIONER

STAFF PRESENT:

MARTIN DANNENFELSER, STAFF DIRECTOR

STAFF PRESENT:
DAVID BLACKWOOD, General Counsel, OGC
CHRISTOPHER BYRNES, RPCU
DEMITRIA DEA
PAMELA A. DUNSTON, Chief, ASCD
ROBERT LERNER, Asst. Deputy Director
TINALOUISE MARTIN, Director, OM
EMMA MONROIG, Solicitor
LENORE OSTROWSKY

COMMISSIONER ASSISTANTS PRESENT:

TIM FAY
DOMINIQUE LUDVIGSON
KIMBERLY SCHULD
RICHARD SCHEMCHEL
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OPERATOR: Good afternoon. My name is Jamie and I will be your conference operator today. At this time I would like to welcome everyone to the Commission meeting conference call.

All lines have been placed on mute to prevent any background noise. If you should need assistance during the call, please press star, then a zero, and an operator will come back on line to assist you.

Thank you, Mr. Reynolds. You may begin your conference.

CHAIRMAN REYNOLDS: Thank you. Good afternoon. This is Chairman Reynolds. It is 5:23 Eastern Daylight Time on October 8, 2009. We're having a telephonic meeting with all of the Commissioners participating from different locations.

I will call the name of each Commissioner in order to determine if there's a quorum to hold a meeting.

Vice Chair Thernstrom?

(No response.)

Commissioner Gaziano?

COMMISSIONER GAZIANO: Here.
CHAIRMAN REYNOLDS: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Here.
CHAIRMAN REYNOLDS: Commissioner Melendez?
(No response.)
CHAIRMAN REYNOLDS: Commissioner Yaki?
(No response.)
CHAIRMAN REYNOLDS: Commissioner Taylor?
COMMISSIONER TAYLOR: I'm here.
CHAIRMAN REYNOLDS: Commissioner Heriot?
COMMISSIONER HERIOT: Here.
CHAIRMAN REYNOLDS: Is the Staff Director present?
MR. DANNENFELSER: Present.
CHAIRMAN REYNOLDS: Is the court reporter on the line?
COURT REPORTER: Yes, sir.
CHAIRMAN REYNOLDS: Okay. Well, then the meeting will come to order. If a Commissioner wants to make a statement, please identify yourself first. Whenever it's necessary to take a vote, the following procedure will be used. I will call out the name of each Commissioner. The Commissioner should then answer yes, no, or abstain after the voting has concluded. I will read out how each of you has voted to ensure that the tally is correct.
APPROVAL OF THE AGENDA

CHAIRMAN REYNOLDS: First item, I move to approve the agenda. Is there a second?

COMMISSIONER KIRSANOW: Kirsanow seconds.

CHAIRMAN REYNOLDS: Any proposed changes?

(No response.)

Okay, I have one. I propose that we table discussion of the National Conference. We want to wait until we have some representation from the Democratic Commissioners.

Is there a second?

COMMISSIONER GAZIANO: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

Okay, we're just voting for the amendment. Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Could we move for the agenda, as amended, with the friendly amendment?

CHAIRMAN REYNOLDS: That will work. I vote aye.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Aye.
CHAIRMAN REYNOLDS: And Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Okay, the vote is unanimous.

MANAGEMENT AND OPERATIONS

CHAIRMAN REYNOLDS: Okay, bear with me. The Staff Director informs me that the Office of Management and Budget has requested that the Commission submit two budget estimates for Fiscal Year 2011. The first would be a flat-line budget at the 2010 level of $9.4 million. And second would be a budget that reflects a 5 percent rescission to that amount to the level of $8.93 million.

Copies of these budget proposals and related documents were sent to Commissioners on Friday, September 18th and then again yesterday evening.

Mr. Staff Director, please provide Commissioners with a description of the staff's recommendations regarding each of these budgets?

MR. DANNENFELSER: Thank you, Mr. Chairman.

We started with the premise that there would be built-in costs from cost of living
adjustments for staff and other basic operations that
tend to increase in the neighborhood of four to five
percent per year. And from that, worked from a
$228,968 shortfall with the flat-line budget. We took
some reductions in travel and rent in there and also
had savings of about $145,000 that we projected in IT
savings for 2011. This was accomplished by the
purchase of several PCs and laptops during FY 2009
with end-of-year funds instead of what was otherwise
projected for purchase in 2011.

We had a delay of a project to establish
Regional Office connectivity to the agency shared
common computer drive and the postponement of the
purchase of new desktop software in the Regional
Offices.

We also realized some savings by phasing
in biometric identification tokens instead of bringing
about immediate agency-wide implementation that
produced a 57 percent savings in that particular area.

And we identified and reduced some redundant costs in
the areas of printing, communication, and contractual
services. And on page five of the budget narrative,
there is a chart that delineates those particular
savings in that area.

With regard to the five percent reduction
budget which is another five percent beyond that flat-line budget, the main thing we did there was in the area of personnel. We had currently three positions that are budgeted in 2010 that are not filled. They are the Deputy Staff Director position, the secretary in the Office of the Staff Director, and a social scientist in the Office of Civil Rights Evaluation. So we projected that those positions would not be filled in 2011 and we also eliminated $50,000 that was projected for the employee bonus pool in that particular, under that particular scenario which is certainly not something that we would normally choose to do, but given the tough decisions that would have to be made under that type of budget, we made that decision.

So I think those are the highlights, Mr. Chairman, but I would be happy to address any other specific questions that Commissioners might have.

CHAIRMAN REYNOLDS: Questions? Comments?
COMMISSIONER GAZIANO: I'll have an amendment in a minute, but I don't have any questions for the Staff Director at this time.

CHAIRMAN REYNOLDS: Commissioner Heriot?
COMMISSIONER HERIOT: No.
CHAIRMAN REYNOLDS: Commissioner Taylor?
COMMISSIONER TAYLOR: Not at this time.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No questions.

CHAIRMAN REYNOLDS: Okay, Commissioner Gaziano?

COMMISSIONER GAZIANO: Thank you. With due regard to the OMB request, I am going to move for a slight increase in our two budget amounts that we submit for FY 2011.

Let me just briefly explain my reasoning.

For the past several years, we've made requests of $12 million and that's been our, I think, our most sincere estimate of what we would need to fully fund the vacant positions, but it doesn't seem realistic that those sort of requests are being favorably considered. So I think a more modest request might be in order. But I do note, in sort of coming up with the amount, that, according to bills currently pending and other news reports, the following civil rights agencies are slated to get -- that we are supposed to help review and somewhat oversee -- are getting huge increases. The EEOC is slated to get a $23 million increase over last year. The Civil Rights Division at Justice is slated to get a $22 million increase and wants to create 54 new legal positions. The
Department of Labor Office of Federal Contract Compliance Program is slated to get a $27.4 million increase and that's a 25 percent increase over previous years.

Jerry's old office at Education, the Office of Civil Rights is slated to get an increase, but not by quite as much. So I submit that although it would be nice to not only not get 54 new legal positions, but if we could just have our Office of the General Counsel perhaps instead of having two of seven slots filled, three of seven, that might help us monitor these other civil rights agencies.

So, with that, I propose that everywhere in the budget where we have asked for the proposed budget, where we've asked for $9,400,000, that we ask for $9,950,000 and, with a five percent rescission figure, that would work out to be $9,452,500, and the only other request or change that I would include in my motion is on page six, under B, it begins "as further required" and change the word "required" to "as further requested."

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER KIRSANOW: Kirsanow seconds.

CHAIRMAN REYNOLDS: Well, hold on. A few comments. We sent out, in our official capacity,
we've sent out several letters and I think that that
is -- that's Commission work that should be reflected,
at least we should consider including that type of
policy discussion into this document, and isn't it
also true that several of you have testified on
Capitol Hill and, if so, was that done in your
capacity as a Commissioner or in your individual
capacity? If it's the former, I would also think that
the documents should reflect those activities also.

COMMISSIONER HERIOT: The occasions on
which I've testified, the call went out to the
Commission, not to me personally. So whether my
comments were on behalf of the Commission, I don't
think that's necessarily fair to say, but the request
was made to send a Commissioner to Capitol Hill and
that's what we did.

COMMISSIONER GAZIANO: You presume then
you testified in your individual as a Commissioner.

COMMISSIONER HERIOT: As an individual
Commissioner.

COMMISSIONER GAZIANO: Sure.

COMMISSIONER HERIOT: So yes, I think
that's Commission activity.

COMMISSIONER KIRSANOW: This is Kirsanow.
I testified in my individual capacity, but I am
readily identified as a Commissioner of the Civil Rights Commission.

In addition to that, the matters upon which I testify are within the purview of the Commission and supported by, generally supported in some measure, by research done by our special assistants.

CHAIRMAN REYNOLDS: Did Commissioner Yaki testify on Capitol Hill?

COMMISSIONER HERIOT: He also testified on the Native Hawaiian Government Reorganization Act before the House Committee on Natural Resources. So the answer to that is yes.

CHAIRMAN REYNOLDS: Okay, so I think that it would be -- that we should consider having those contributions to public policy discussions reflected in this document, as well as the policy statements that have gone out in some of our letters, at least those letters that have gone out as a part of a Commission vote.

COMMISSIONER GAZIANO: Mr. Chairman, this is Commissioner Gaziano for the record. You also reminded me that some of our letters are for information at EEOC and the Department of Justice, of which we have not been favorably blessed with
responses. As a matter of fact, EEOC said that it would be somewhat burdensome for them to have to respond to us and we could just look at their website. Again, this is another reason why I think at least a modest increase in our budget is appropriate, if these other agencies we're trying to look at are getting $22 and $23 million increases.

CHAIRMAN REYNOLDS: Any other comments?

COMMISSIONER KIRSANOW: I think those increases are so that they can more readily reply to our information requests.

COMMISSIONER GAZIANO: I hope so.

COURT REPORTER: I'm sorry, this is the court reporter. Could I ask people to please identify themselves before they speak. Thank you.

CHAIRMAN REYNOLDS: All right. May I have a motion that the Staff Director be directed to finalize and submit to OMB the 2011 budget estimate as well as the budget estimate with the five percent rescission, but making the changes that have been agreed upon during this exchange?

COMMISSIONER GAZIANO: I so move if you mean the figures that I've included.

CHAIRMAN REYNOLDS: The figures, the inclusion of discussion of the testimony on Capitol
Hill, as well as the policy issues that we've dealt with in some of the letters that we sent out.

COMMISSIONER GAZIANO: Sure, I'll accept that or move that or accept that as a friendly amendment to my motion.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER KIRSANOW: Kirsanow seconds.

CHAIRMAN REYNOLDS: Do we need discussion? Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: I'm going to abstain on this one.

CHAIRMAN REYNOLDS: Okay. Let the record reflect that Commissioners Gaziano, Kirsanow, Taylor and the Chairman voted in favor of the motion and Commissioner Heriot abstained.

PROGRAM PLANNING

CHAIRMAN REYNOLDS: Okay, next up is a discussion vote on a letter to Attorney General Holder that Commissioner Kirsanow circulated on September 23
regarding ACORN in light of the recent activities that
have cast the organization in the news once again.
The letter was recirculated again yesterday evening
via email.

Commissioner Kirsanow, would you like to
speak to your letter?

COMMISSIONER KIRSANOW: Well, we've
already spoken about it. This is Kirsanow.

COMMISSIONER HERIOT: Do I have -- the
copy that was attached to Marty's email, is that the
current copy or is there a different version now?

CHAIRMAN REYNOLDS: Of the -- I believe
that the -- if you're referring to Marty's email that
was sent out yesterday evening, I believe that's the
latest version.

COMMISSIONER HERIOT: I have to make sure
I'm looking at the right thing here.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes. I think
we've had discussion on this, a significant amount of
discussion on it and, again, I simply move the
Commission approve the letter to Attorney General
Holder, as amended.

COMMISSIONER TAYLOR: Taylor seconds.

CHAIRMAN REYNOLDS: Okay, I have a few
friendly amendments.

COMMISSIONER HERIOT: Me, too.

CHAIRMAN REYNOLDS: Okay, you go first.

COMMISSIONER HERIOT: One of mine is just a ridiculous quibble. And that is the use of the word "disenfranchise" which is a perfectly legitimate word, but it also competes with disfranchise, which is also a perfectly legitimate word, and partisans of disfranchise actually sometimes believe that they are right and that disenfranchise is wrong. So, in the interest of most conservative grammar, I would go for disfranchise.

COMMISSIONER KIRSANOW: I would accept that.

COMMISSIONER HERIOT: The other one is that I would prefer not to refer specifically to RICO, but rather refer to federal law.

COMMISSIONER KIRSANOW: Kirsanow accepts that too.

CHAIRMAN REYNOLDS: Is that it, Commissioner Heriot?

COMMISSIONER HERIOT: Yes, it is.

CHAIRMAN REYNOLDS: Okay, on the first line of the last paragraph at the bottom of the first page, I would ask that we amend the letter to insert
the words "several Commissioners" in place of "we" so
that it would read: "On October 28th, several
Commissioners wrote to your predecessor, Attorney
General Michael Mukasey."

Commissioner Kirsanow, are you comfortable
with the --

COMMISSIONER KIRSANOW: I am.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER HERIOT: Yes, because I think
I was not one of those who wrote. I don't remember
that letter.

COMMISSIONER GAZIANO: Yes, that's my
recolletion as well from my records. So I prefer
that wording as well. This is Commissioner Gaziano.

CHAIRMAN REYNOLDS: Okay. And the second
change, I'd like to change -- well, looking at the
last paragraph of the letter, first sentence, I'd like
to change the word "recent" to "former" so that the
sentence would read, "According to press accounts, a
former ACORN Board Member, Marcel Reid" yadda, yadda,
yadda.

COMMISSIONER KIRSANOW: I'll accept that
also.

CHAIRMAN REYNOLDS: Any further
amendments?
COMMISSIONER KIRSANOW: Mr. Chair, I would move that we approve the letter to Attorney General Holder, as amended by the friendly amendments.

CHAIRMAN REYNOLDS: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Aye.

CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIRMAN REYNOLDS: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIRMAN REYNOLDS: Commissioner Taylor?

COMMISSIONER TAYLOR: Yes.

CHAIRMAN REYNOLDS: Okay, the motion passes unanimously and that concludes the meeting.

COMMISSIONER GAZIANO: Could I just make one quick motion? I move that the letter so approved by a majority be circulated to any others, or is that necessary to see if they want to join in who are not at the meeting?

CHAIRMAN REYNOLDS: Sure, we can -- well, Pete, do you have any concerns with that suggestion?

COMMISSIONER KIRSANOW: No, not off the top of my head, although I think everyone had an opportunity to weigh in.

COMMISSIONER GAZIANO: Okay, leave it to
the person originating the letter then?

COMMISSIONER KIRSANOW: Can we do this, because this is really more administrative than anything else. If one of our special assistants could indicate that this letter was about to go out and that they would give a window period of until noon tomorrow in which the other Commissioners who were not present on the call can voice whether or not to include their signatories onto the letter.

CHAIRMAN REYNOLDS: Okay, we have a plan. All right, folks, that concludes the meeting. Thank you very much.

(Whereupon, at 5:43 p.m., the meeting was concluded.)
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