U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

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FRIDAY, DECEMBER 13, 2013

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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C. at 9:30 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman
ROBERTA ACHTENBERG, Commissioner *
TODD F. GAZIANO, Commissioner *
GAIL HERIOT, Commissioner
DAVID KLANDNEY, Commissioner
MICHAEL YAKI, Commissioner *

MARLENE SALLO, Staff Director
JENNIFER CRON HEPLER, Solicitor, Parliamentarian

* via telephone
STAFF PRESENT:
MARGARET BUTLER
MALEE CRAFT, Director, RMRO
IVY L. DAVIS, Director, ERO
PAMELA DUNSTON, Chief, ASCD
ALFREDA GREENE
TINALOUISE MARTIN, Director, OM
HOPE LOVETT
JOHN RATCLIFFE, Chief, BGT
EILEEN RUDERT
MICHELE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:
ALEC DEULL
KENESHIA GRANT
JOHN MARTIN
JUANA SILVERIO
ALISON SOMIN
KIMBERLY TOLHURST

OCRE INTERN PRESENT:
RICHARD AHNE
T-A-B-L-E  O-F  C-O-N-T-E-N-T-S

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CHAIRMAN CASTRO: I'm going to call this meeting to order. This is a meeting of the U.S. Commission on Civil Rights. Today is December 13, 2013. It is now 9:36 a.m. Eastern Time. Our meeting is taking place as usual at the Commission's headquarters located at 1331 Pennsylvania Avenue, N.W. in Washington.

I'm Chairman Marty Castro. Commissioners who are present in the meeting with me are myself, of course, Commissioner Heriot, Commissioner Kladney. On the phone we have Commissioner Gaziano, Commissioner Achtenberg, and Commissioner Yaki. A quorum of the Commission is present.

Is the court reporter present?

COURT REPORTER: I am.

CHAIRMAN CASTRO: He is.

Is our Staff Director present?

STAFF DIRECTOR SALLO: Present.

CHAIRMAN CASTRO: Okay. So the first item we have is the Approval of the Agenda.

I. APPROVAL OF AGENDA

CHAIRMAN CASTRO: I move that we approve the agenda. Is there a second?

COMMISSIONER KLASTNEY: Second.
CHAIRMAN CASTRO: Okay. Are there any amendments? Hearing none, let's vote to approve the agenda. All those in favor say aye.

COMMISSIONERS: Aye.


Before we proceed to the formal agenda, I would like to add a few remarks.

First of all, I want to welcome back our Commissioner Gail Heriot who, as you know, at our last meeting, was her last meeting of her last term but she's been in the interim reappointed so we're glad to have you back.

Welcome back.

COMMISSIONER HERIOT: Thank you, Mr. Chairman.

CHAIRMAN CASTRO: Also, you know, this last week we've observed a couple of important events. Last week, of course, we lost Nelson Mandela at age 95. And it's important, I think, that those of us in the civil rights community recognize the great accomplishments that he had not only for the people of South Africa but for all of us across the world.

And I think the words of Nelson Mandela that are most apropos to the work that we do here at the...
Commission is his quote that says, "It is intolerable and unacceptable that the cancer of racism is still eating away at the fabric of societies in different parts of our world.

All of us, black and white, should spare no effort in our struggle against all forms and manifestations of racism wherever and whenever it rears its ugly head." So we with others mourn his passing. We also recognize that this week we celebrated International Human Rights Day.

I know that not everyone on the Commission is as fond of the UN issues as some of us are but we all agree that human rights is something that we want to recognize to the extent possible and be part of an effort to ensure that at least here at home everyone's human rights and civil rights are respected.

So, with that I would like to move onto our formal agenda. First we have Management and Operations so if our Staff Director could proceed.

II. MANAGEMENT AND OPERATIONS

STAFF DIRECTOR'S REPORT

STAFF DIRECTOR SALLO: Thank you, Chairman. The report will not be as long as last month but I followed the same format in referring to our strategic goals and objectives as I go through the
But prior to that, I wanted to advise the Commission that our two interns from the OGC office, Raziya Brumfield and Kristin Stitcher, they are no longer with us. They completed their fall 2013 legal internships. In the audience today we have Richard Ahne and he is completing his internship today.

With us, he's been with the Office of Civil Rights Evaluation and all three interns actually did a significant amount of work as all our interns always do. And they truly contributed to the work that we've been doing the past three and four months. And I am extremely grateful for all of their efforts and they will all be missed.

CHAIRMAN CASTRO: Can I just add something?

STAFF DIRECTOR SALLO: Oh, sure.

CHAIRMAN CASTRO: I want to thank all of our interns for their service but especially you. I understand you've done a tremendous amount of work here and contributed greatly in your time so I want to thank you for that service and wish you well as you move onto other things. Hopefully we'll see you back here in some other capacity in the future.

STAFF DIRECTOR SALLO: Richard came to us from the Hill. He had an internship there as well. So
I recently went up to the Hill just to gather information on Stand Your Ground and I brought him with me and he was extremely helpful while we were up there. He was raring to go. He did a lot of the background research for us so he will be missed.

CHAIRMAN CASTRO: Thank you.

STAFF DIRECTOR SALLO: I now want to go into the first part of our strategic action plan which refers to the studies that we issue. I wanted to advise that as it applies to our Statutory Enforcement report, that was sent out by the deadline of September 30th and it was disseminated electronically. We did, however, order hard copies.

GPO did send us a hard copy recently for us to review before it goes to final print. And thankfully staff did identify some spacing issues so that was sent back to GPO for corrections and hopefully the print will now commence. So once we have the hard copies, I will advise the Commissioners of such. I also plan on submitting hard copies to our Committee members so that they can have it -- easy access rather than having the electronic.

As it applies to the outstanding reports that we currently have in the pipeline, we did receive rebuttal for the EEOC report as well as the Eminent Domain
report. I did disseminate that yesterday. My apologies. I should have done it earlier in the week.

At this point in time they have been given -- all the statements have been provided to the editor. We will, of course, await the requisite time to see if anyone plans on submitting a sur-rebuttal. If not, then we will move forward with getting it ready for print.

A cover has already been identified for the EEOC report and we are currently trying to shore up an appropriate cover for the Eminent Domain. We've been going back and forth with stock pictures to figure out what fits best.

COMMISSIONER HERIOT: Will we get a chance to see the cover -- proposed cover?

STAFF DIRECTOR SALLO: If you want me to, I can send it.

COMMISSIONER HERIOT: I know it's a minor issue but a few years back there was a cover that I just went bananas over.

CHAIRMAN CASTRO: In a bad way?

COMMISSIONER HERIOT: In a bad way. This was before your tenure.

(Laughter.)

STAFF DIRECTOR SALLO: Okay. I will forward that.
Then we also have the trafficking and the post-9/11 report. I did give it to the copy editor so she could adjust the margins and everything. I read it. I'm in the process of making some tweaks and then I will disseminate it to the Commissioners for review and for any edits that they may have.

We also have the Religious Liberty report that I have yet to review, the Civil Rights of Our Veterans which I've kind of skimmed over, and the NVRA report that I have yet to review. Those are the other three that are in the pipeline. I will be moving forward on those as best as I can.

As it applies to, I previously indicated that we were going to have a gentleman come in to do the advanced reporting writing seminar. That did occur. I believe that he did an excellent job and staff participated both here at headquarters and from the regional office so I was very happy about that.

As we move onto Strategic Goal B where it discusses Stand Your Ground, at this point in time it's kind of on hold for the present moment because we have been working on all these other issues. But starting in the new calendar year we will move forward with continuation of the Stand Your Ground project.

If you reviewed the report from the Office
of the Staff Director, we do have other things listed throughout that I think I won't be reviewing step by step but I will advise that we are currently reviewing our AI's to see which ones are out of date so that we can update them. So, we continue to move forward on that. That will be about a six-month project because there are so many things that staff are responsible for doing at the same time. So we are looking at a six-month project for that.

We are also updating our -- finalizing the updates to the Civil Rights book that we put out every year, the Uncle Sam book. Since we do have the in-house editor, I want her to be able to complete the Spanish version as well as the English updated version before she leaves in April so that we can get that printed as well.

And then as it applies to the SACs, we did have a report that was just issued and I will be disseminating it from the Nevada SAC members. So I will be sending that out. And we will probably have a couple of other reports coming forward, one from Tennessee, one possibly from Florida, as well as Georgia in the near future.

And our SAC members continue to meet as best as they can telephonically. We do have a 1-800 number that the SAC members have access to so that they can hold
telephonic meetings and that number allows our members to also receive a transcript of each meeting that they hold telephonically which then can be uploaded onto our FACA database which is a requirement so that we can keep track of all of the activities of the SACs.

I continue to keep an open line of communication with the SAC members, as well as the SAC chairs. And after the holidays are over we hope to start ramping up a bit more. Especially once we receive our budget.

That being said, with the budget at the present time we are all aware that the House has a budget in place but as it applies to our CJS budget, they should be going to conference. I don't have the exact date as of yet but as it applies to both the Senate and the House bill, I'm not aware of any changes since the last time that I circulated that. It looks like there's a difference of at least $700,000 between the House proposed budget and the Senate proposed budget. Once I receive word that they are going to conference, I will advise every one of that.

That's my report.

CHAIRMAN CASTRO: Any questions for the Staff Director?

COMMISSIONER GAZIANO: Mr. Chair.
CHAIRMAN CASTRO: Commissioner Gaziano.

COMMISSIONER GAZIANO: Yes. I just have a sort of follow-up item for the Staff Director from the previous meeting.

STAFF DIRECTOR SALLO: Yes, sir.

COMMISSIONER GAZIANO: If that's appropriate.

CHAIRMAN CASTRO: Yes, please.

COMMISSIONER GAZIANO: You announced at the last meeting that Mr. Rorey Smith, I believe, was hired and I'm not sure at that time whether he was actually hired or going to be hired. Is he now serving the Commission?

STAFF DIRECTOR SALLO: He will start with the Commission on Monday.

COMMISSIONER GAZIANO: Okay. Well, I don't necessarily mean to hold him up unless we in our discussion today suggest that is appropriate. But at the last meeting I asked you about the observance of our rule. It's actually an AI, A I1-16. I didn't know that -- actually Section 2.03 -- that the Commission has 30 days to -- the Commissioners, I should say, have 30 days to review an intended appointment by the staff director of the general counsel or the deputy staff director and vote to disapprove.
And your comment at that time was that this had been changed from a political appointment to a career appointment. My review of the AI suggests no distinction is inherent in the AI. And I'll read it for the other Commissioners. If the gentleman was already on the job, I'm not sure I would have suggested to try to unscramble that egg.

But anyway, the AI reads, "The Staff Director shall submit the names of any individuals whom he/she proposes to appoint as Deputy Staff Director or General Counsel to the Commission. During the period of 30 calendar days after such submission, the Commission by a vote of majority may reject such proposed appointments. If the Commission fails to act during such periods, the Staff Director thereafter may proceed with the appointment."

You might -- that rule might be, I should say, exercised in one way if it's a political appointment and in a different way if it's a career appointment but I don't see why it can't be observed, or couldn't be observed.

And so -- then the final point I'll just make is I think given the importance of the General Counsel in providing the Commission advice and individual Commissioners advice from time to time, it would be a good
policy, at least, to allow Commissioners to meet the
candidate or have met the candidate. Anyway, I kind of
want to throw that out for your reflection and whether
you had looked at that language since the last meeting
and have had any thoughts on whether there's a way to
observe it in some manner.

STAFF DIRECTOR SALLO: I did review it but
my position remains that it's a career status position
and as the hiring authority for the agency, I interviewed
candidates and I made the best choice based on what the
needs of the Commission are and he is an excellent
candidate.

COMMISSIONER GAZIANO: I hope that's the
case. I expect that's the case. But the other question
is why did you not follow the AI?

STAFF DIRECTOR SALLO: Because I take the
AI as referring to an appointment when it was a political
appointee just like the Deputy Staff Director. But as
it applies to a career service, the Staff Director has
always been the one to interview career service
applicants and to offer the jobs to the career service
applicant.

COMMISSIONER GAZIANO: Again, I'm not sure
that I see the AI is inconsistent with a career service
hire. And I'll let other Commissioners comment or other
Commissioners decide if they would like an opportunity to meet with the General Counsel. I would think we might want our thoughts on such candidates and I'm really raising this more going forward as far as trying to make sure the AIs not looking for conflicts in AIs and other regulations but always looking to observe the AIs.

CHAIRMAN CASTRO: This is the Chairman. I think the egg has been scrambled already. We've extended an offer to this gentleman. He's accepted it. He starts on Monday. I also think that to the extent the Staff Director -- and I've also looked at this AI -- I believe it is an AI that is historically outdated.

There was a time when these appointments were political. As other political appointments, the Commission then does have some authority. For example, when the President sent over the Staff Director candidate. We interviewed her. We vote on her. That was appropriate. When the President elevated me to Chairman, you all had the opportunity to vote on me.

Those were important political appointments. Had the position of General Counsel been sent to us by the White House and presented to us by our Staff Director in that capacity, then we would. This is a career position.

I think those of you who have been involved
in federal government for the longest time know that it is inappropriate for us as political appointees to engage in any process that impinges on the hiring of career employees which this General Counsel is. What the AI may say is not in my estimation something that is legally allowed for us as Commissioners.

Secondly, there are a lot of AIs that we need to update and I think that is one of them because it creates these areas of confusion where there shouldn't be. I believe even going forward in other positions that our Staff Director may choose to hire, if they are career appointments, those are in her purview, not ours.

CHAIRMAN CASTRO: Commissioner Heriot.

COMMISSIONER HERIOT: I spoke to Commissioner Gaziano about this a little bit before the meeting. I'm inclined to agree with him that the AI as written does require the Staff Director to give us a heads up. It's true that this egg is scrambled and I don't understand Commissioner Gaziano to be claiming anything to the contrary.

It's not at all clear to me that the AI is in conflict with the law but if we don't like it, then we need to change it and that has to be done by the vote of the Commission. And so, I think it's very important that we at least get an understanding that unless that
AI is changed, if this issue comes up again, we have to take a much more careful look at whether this AI is within the law.

CHAIRMAN CASTRO: That's a good point, Commissioner. I think going forward we are going to take a close look at that and other AIs and then present to this Commission revisions for situations going forward. I think for this one the die is cast.

COMMISSIONER GAZIANO: Commission Heriot is right. I'm not saying otherwise. I think my previous statement is to that effect. Even if it is legal but we don't like it, let's change it. If it's illegal, let's definitely change it. Or if it's illegal as applied to a career employee, I just don't see that.

My other last suggestion is that for most staff contacts between Commissioners and staff ought to be -- you know, inconsequential contact is one thing but mostly go through the Staff Director. For a Deputy Staff Director General Counsel may be the head of OCRE.

I think that it would be good for Commissioners to have at least a personal relationship with them. Once Mr. Smith begins his service to the Commission, I would suggest that the Staff Director and he discuss an appropriate way to maybe extend an opportunity to those Commissioners who want to have a
meeting to get to know him.

We may all want to bring him up to speed. For example, I might want to explain to him that we are absolutely not an executive branch and he ought not to make that mistake that so many people have in the past.

(Laughter.)

You all may have your own views that you would like to at least make him aware of to make his job easier. From your view you'll say, “This crank, Gaziano thinks we're not an executive branch. You better watch that.” With that I think we could move on to the agenda.

CHAIRMAN CASTRO: Does that mean you are going to be reappointed Commissioner?

COMMISSIONER GAZIANO: That's for the Speaker to announce.

CHAIRMAN CASTRO: Just wondered if you had some news that we didn't have yet. We hope to see you back.

COMMISSIONER GAZIANO: Okay.

CHAIRMAN CASTRO: Any other Commissioner have anything else they would like to add or would the Staff Director like to say anything before we move on?

STAFF DIRECTOR SALLO: No.

CHAIRMAN CASTRO: Thank you, Commissioner. We're going to move on to the formal agenda now which is,
of course, reviewing some State Advisory Committees.

III. STATE ADVISORY COMMITTEE (SAC) APPOINTMENTS

DELAWARE

CHAIRMAN CASTRO: The first one we have on the agenda is Delaware. I am going to make a motion that the Commission appoint the following individuals to the Delaware Committee based upon the recommendation of our Staff Director.


Pursuant to this motion, the Commission appoints Lisa B. Goodman as Chair of the Delaware State Advisory Committee. These members will serve as uncompensated government employees. Under this motion the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointments.

Do I have a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRMAN CASTRO: Okay. Any discussion?

None. Okay. We'll take a vote.

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano,
how do you vote?

    COMMISSIONER GAZIANO: Yes.
    CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?
    COMMISSIONER ACHTENBERG: Yes.
    CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?
    COMMISSIONER Kladney: Yes.
    CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?
    COMMISSIONER Yaki: Aye.
    CHAIRMAN CASTRO: As do I and so the slate passes unanimously.

    GEORGIA
    CHAIRMAN CASTRO: I am now going to make a motion that the Commission appoint the following individuals to the Georgia State Advisory Committee based upon the recommendation of our Staff Director.
    Samuel C. Burch --
    COMMISSIONER GAZIANO: Mr. Chair, are you on the mic? I can barely hear you now.
    CHAIRMAN CASTRO: My mic went off. Sorry about that.
    COMMISSIONER GAZIANO: Okay. That's fine.
CHAIRMAN CASTRO: Let me start again. I'm now moving onto the Georgia SAC. I'm going to make a motion that the Commission appoint the following individuals to the Georgia State Advisory Committee based upon the recommendation of our Staff Director.


Pursuant to this motion, the Commission appoints Geraldo E. Gonzalez as Chair of the Georgia State Advisory Committee. These members will serve as uncompensated government employees. Under this motion the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointments.

Do we have a second on my motion?

COMMISSIONER KLADNEY: Second.

COMMISSIONER GAZIANO: I have a question, Mr. Chair.

CHAIRMAN CASTRO: Go ahead.

COMMISSIONER GAZIANO: I move to sever Mr. Gonzalez from the list and I would like to address that. It's in our practice, or at least Commission Yaki has
argued, that the severance doesn't need to be voted on.

CHAIRMAN CASTRO: Could you repeat that? I'm sorry.

COMMISSIONER GAZIANO: I move to sever Mr. Gonzalez and I think it's been our practice that the severance is always understood under -- always effective under our rules.

CHAIRMAN CASTRO: I think we've gone back and forth on that and we haven't been consistent. But why do you move to sever him?

COMMISSIONER GAZIANO: So that we can vote on him separately.

CHAIRMAN CASTRO: Is there a second to that motion?

COMMISSIONER HERIOT: I'll second it.

CHAIRMAN CASTRO: Why don't we deal with that first before we deal with the full slate? What is your concern?

COMMISSIONER GAZIANO: Well, I will express concern that is in our public record so I'm not sure that we need to send Mr. Gonzalez an opportunity to respond but if any other Commissioner would like to postpone and do that, that's fine but I think --

CHAIRMAN CASTRO: Let's deal with it today.

COMMISSIONER GAZIANO: Sure. Our record
from the August 17, 2012 briefing where Mr. Gonzalez was a witness we had to ask him to change his statement because he engaged in ad hominem attacks against fellow witnesses. He compared fellow panelists to Ku Klux Klan and Neo-Nazis and --.

CHAIRMAN CASTRO: Wait. Hold on a second. Hold on a second. We have our lawyer who --

MS. HEPLER: That statement has not been made public. Please contain your remarks to the statement that is available on the internet and available to the public.

CHAIRMAN CASTRO: Do you understand that, Commissioner Gaziano?

COMMISSIONER GAZIANO: No, I didn't hear. What was the --

COMMISSIONER ACHTENBERG: We couldn't hear anything.

MS. HEPLER: Okay. This is what it is. Can you hear me now? Is it on?

PARTICIPANT: No.

COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: Just a second. Our lawyer is giving us some legal counsel here on the issue. Bear with us.

Why don't you use that microphone?
MS. HEPLER: Can you hear me now?

COMMISSIONER GAZIANO: Yes, I can hear now.

MS. HEPLER: Okay. The statement you're referring to was not made available to the public so it shouldn't be brought up in the public session and it wasn't his final statement. The statement that you can refer to in this meeting is the one that is available on the Internet and --

COMMISSIONER GAZIANO: It was a matter of public record at that meeting because it came up that he had to revise his statement.

MS. HEPLER: I don't have -- you know, I'm not aware of what went on. I wasn't at the meeting.

CHAIRMAN CASTRO: Just because a statement was revised, you cannot state what was taken out of it --

MS. HEPLER: Right.

CHAIRMAN CASTRO: -- and add that to the public record.

COMMISSIONER GAZIANO: It's impossible to take it out of our head and so based on what is in my head --

MS. HEPLER: It shouldn't be discussed at this meeting because it's like a draft document.

COMMISSIONER GAZIANO: Oh, okay. Well, he
engaged in ad hominem attacks. But in his statement that is filed and is on the Internet he still engaged in ad hominem attacks.

MS. HEPLER: That statement is open for discussion here, that statement that's on the Internet, because it's a public record.

COMMISSIONER GAZIANO: We can't remove the prior statement anyway. But let's just take the one that is on the public record. He still engaged in ad hominem attacks. And so based on our standard whether someone has a particular view or not, one of the most important things we evaluated in past members was whether they can respectfully engage in dialogue in others whose opinions they disagree with. I think Mr. Gonzalez having been warned that his statement ran afoul of our defame and degrade rule continued to engage in ad hominem attacks is demonstrated quite clearly.

MS. HEPLER: The defame and degrade doesn't mean -- that's an internal GC issue. Okay? So please --

COMMISSIONER GAZIANO: Listen.

MS. HEPLER: You can say there was one but the results of OGC opinions are not supposed to be posted in the public meeting.

COMMISSIONER GAZIANO: I'm not saying what
your opinion was. I'll tell you what my opinion was. He still violated it. But regardless of whether he violated it, he still engaged in ad hominem attacks against others in his statement including fellow panelists who he disagreed with.

And that is just not the kind of person that we have approved for a SAC, let alone a SAC Chair. I think our public record is quite clear that once warned he still can't resist engaging in ad hominem attacks. If he is on SAC and especially if he's appointed to chair of the SAC, I can't imagine how that will be a well-run good experience for anyone. Even those who agree with him probably do not enjoy a Chair who tries to shut down people he disagrees with ad hominem attacks.

STAFF DIRECTOR SALLO: May I --

CHAIRMAN CASTRO: Let me speak first, Madam Staff Director, and then I'll cede to you.

First of all, Commissioner, there was no legal conclusion by our General Counsel's office that anyone had defamed or degraded. There were concerns raised by some Commissioners that were expressed --

COMMISSIONER GAZIANO: You're now --

CHAIRMAN CASTRO: Let me finish. Let me finish.

COMMISSIONER GAZIANO: The General
Counsel --

CHAIRMAN CASTRO: Some of the speakers were given the opportunity to change their statements and many did including Mr. Gonzalez. At the event he did not, in my estimation, engage in ad hominem attacks.

However, if that is the measure of anyone serving on this Commission or a committee, then I think there's even people at this meeting that would have disqualified themselves from attacks you all have made on one another many times prior to my becoming Chair. So let's look at this in a realistic practical way. You have been a champion, Commissioner, of First Amendment rights and I respect that.

In fact, even in our bullying report you stated while they cannot penalize students based on the viewpoints they articulate, schools can insist the students take care to express themselves appropriately and constructively without profanities or epithets, for example.

Now, it seems that your position on the First Amendment has become malleable. I would say that in this instance Mr. Gonzalez did exactly that. He acted appropriately and constructively when he and others were given a comment about taking care to express how they express themselves. What he said at that meeting is
protected by his First Amendment rights and you as a champion of that I would expect you to understand that.

Furthermore, I have seen Mr. Gonzalez in action at the Georgia SAC meetings and I know for a fact, and I know from other members of that Committee that he is very respectful of other people's perspectives and point of views and works very well with others. So I think the opinion that you have that he would do otherwise is not only inappropriate but I think is something that defames him.

COMMISSIONER GAZIANO: Okay. Let me just respond to a couple of quick points and then maybe we can see how the other Commissioners want to vote on this.

CHAIRMAN CASTRO: Then we are going to let the Staff Director say something.

COMMISSIONER GAZIANO: Let me respond to your points.

CHAIRMAN CASTRO: Go ahead.

COMMISSIONER GAZIANO: You said that the General Counsel did not rule he defamed and degraded, supposedly it is a violation of what the General Counsel -- but actually the General Counsel did rule that he defamed and degraded.

Secondly, I think your characterization of my First Amendment views, although somewhat
oversimplified actually supports what I'm saying. Certainly the schools can ask kids to engage in dialogue in a respectful manner. And we have that responsibility when considering SAC members. That's been a ground for us to reject SAC members in the past and I supported that regardless of what their view is.

I have asked conservative nominees to be removed generally without objection from liberals serving on the Commission if I think they engage in ad hominem attacks and can't get along with others. I think that is one of the standards we ought to apply.

And whether his subsequently filed testimony violated the defame and degrade or not, I think his public statement is further proof that, you know, he doesn't engage in dialogue in a respectful manner.

CHAIRMAN CASTRO: Okay. I'm going to let the Staff Director add some comments. Unless other Commissioners have anything they want to add after that, I'm going to call your motion for a vote.

STAFF DIRECTOR SALLO: I would like to remind everyone is that our regional directors work with each and every one of our SAC members on a daily basis. I have absolute trust in each of my regional directors and the folks that they put forth as reappointments.
I know for a fact that they would not reappoint someone, and Mr. Gonzalez is a reappointment, if they felt in any way, shape, or form that this individual could not be impartial at any of the meetings or they felt that the individual throughout their two-year tenure had in any way, shape, or form obstructed anything that was trying to be done or at some point in time failed to cooperate with other members of the SAC that were of a different opinion than he is.

At this point in time I can say without an iota of a doubt that I have looked into his behavior with the SAC members. I have asked my regional director to report back to me if there have ever been any concerns and there are absolutely no concerns in his two-year tenure with this SAC that he in any way, shape, or form ever impeded any work from going forward.

I put his name forth because I trust that isolated incident at that immigration briefing, which was a passionate topic for all those involved, was an isolated incident. I would put that forth to the Commissioners.

CHAIRMAN CASTRO: Okay. Anyone else?

COMMISSIONER YAKI: Yes, Mr. Chair. It's Commissioner Yaki.

CHAIRMAN CASTRO: Yes, Commissioner.
COMMISSIONER YAKI: I had the good fortune to meet with Mr. Gonzalez the day before his testimony and had a very good conversation with him about this and many other things. I did not get the feeling this is someone who certainly could not work well with others, but I would just add that what we say, and I'm saying "we" as all of us as Commissioners or civil rights activists, as people who are in the public eye. What we may say at a forum such as a hearing or a speech or, as the Commissioner clearly pointed out, sometimes at each other during a heated Commission meeting, it's harder than when we sit down and we talk about how we work on certain items. And I do trust the judgment of the Staff Director and regional directors in assessing Mr. Gonzalez' character in working as a SAC member and as a potential SAC chair.

I have less concern about how he comports himself in a setting where he is speaking on his behalf at our request on important subjects versus how he would act as a facilitator, moderator, and leader of the SAC. I have every confidence that he'll be a very good SAC Chair.

CHAIRMAN CASTRO: Thank you, Commissioner. I'm going call this motion to sever for a vote. I vote no.
CHAIRMAN CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: No.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Well, Commissioner Gaziano is correct that I believe that a motion to sever is a privileged motion. I will vote yes.

COMMISSIONER GAZIANO: So it is three to three. The motion fails.

We now move on to the main motion which is the motion to approve the Georgia State Advisory Committee.

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Aren’t we going to have a discussion?
CHAIRMAN CASTRO: I thought we just did. Do you have some other folks you want to discuss?

COMMISSIONER HERIOT: Not individually.

CHAIRMAN CASTRO: Okay.

COMMISSIONER HERIOT: I'm very concerned about the balance of this SAC. Georgia is not exactly a blue state. I can't imagine why more conservatives couldn't be found for the SAC.

CHAIRMAN CASTRO: Any other comments?

COMMISSIONER GAZIANO: I share the same view even if Mr. Gonzalez weren't on the slate as chair.

CHAIRMAN CASTRO: Madam Staff Director, do you want to address that?

STAFF DIRECTOR SALLO: We currently have four Independents; two that I believe are more conservative than the others. We have four Conservatives. We have six Democrats and we tried to balance it out as best as possible meeting all of our requirements including the male to female ratio, race, ethnicity, their background, the work that they do. We have recommendations from Congressmen. We actually did the best that we could.

It was sent back before to make sure that it was more balanced as it applied to male/female and we have now been able to do that. There was extensive
outreach. We received names also that we considered to add on. And I would ask the Commissioners to please move forward and not hold up the Georgia slate.

CHAIRMAN CASTRO: Okay. Any other comments?

COMMISSIONER HERIOT: Mr. Chairman.

CHAIRMAN CASTRO: Yes, ma'am.

COMMISSIONER HERIOT: I just want to point out that our AIs require balance on ideology, not on gender or race and ethnicity.

CHAIRMAN CASTRO: And it looks ideologically balanced under the circumstances. It doesn't require a one-to-one balance. We have other SACs that we've approved that have more conservatives than non-conservatives. We have some that --

COMMISSIONER HERIOT: Actually, we run in the opposite direction. It just seems that everything is always a little bit tilted and this one is a lot tilted.

COMMISSIONER GAZIANO: North Dakota will have more and we are going to vote on that next, a number of more Conservatives, and I'm going to vote in favor of that. It's not a perfect science but we're doing the best we can here and under the circumstances it seems balanced, but if you don't feel it is, then vote against it.
I'm going to call this motion for vote and do a roll call.

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I vote no.

CHAIRMAN CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: And I vote yes. The motion passes four to two.

I am now going to move on to North Dakota.

NORTH DAKOTA

CHAIRMAN CASTRO: I am going to make a motion that the Commission appoint the following individuals to the North Dakota State Advisory Committee based upon the recommendation of our Staff Director.

Dr. Cheryl Ann Longfeather Kerry, Cheryl
Bergian, Marc S. Bluestone --

STAFF DIRECTOR SALLO: It's Dr. Cheryl Ann Kerry for chair.

CHAIRMAN CASTRO: Oh, Cheryl Ann Kerry. Okay. Is Ann Longfeather somebody different?

STAFF DIRECTOR SALLO: Yes.

CHAIRMAN CASTRO: Let me reread that. Dr. Cheryl Ann Kerry. Longfeather is another person.


STAFF DIRECTOR SALLO: There's three more.

CHAIRMAN CASTRO: Sandra J. Boehler, David J. Lanpher, and Mark F. Tobin. Pursuant to this motion the Commission appoints Dr. Cheryl Ann Longfeather -- Longfeather.

STAFF DIRECTOR SALLO: Yes.

CHAIRMAN CASTRO: Dr. Cheryl Ann Longfeather Kerry.

STAFF DIRECTOR SALLO: She changes her name on the application so my apologies.

CHAIRMAN CASTRO: Dr. Cheryl Ann Longfeather Kerry as Chair of the North Dakota State Advisory Committee. These members will serve as
uncompensated government employees. Under this motion
the Commission authorizes the Staff Director to execute
the appropriate paperwork for the appointments.

Is there a second on that motion?

COMMISSIONER Kladney: Second.

Chairman Castro: Thank you. Any
discussion?

Commissioner Gaziano: This is
Commissioner Gaziano. Just briefly. This came up in
the last slate. Our rules and procedures suggest
ideological balance and, again, not party affiliation --
the use of party affiliation as a proxy for that. As
we've discussed in the past, it's a bad proxy and can
certainly be improved upon.

So even though there might be more
Republicans than Democrats, yet again somehow we have I
think more people who have clearly liberal views than
known conservative views, but I'll probably abstain from
this one because I'm not at least confident that it is
ideologically imbalanced as the Georgia one was. This
could at least be a closer case but based on our review
of what is known, it still looks like it is a liberal
leaning panel.

Staff Director Sallo: May I?

Chairman Castro: Yes, Madam Staff
STAFF DIRECTOR SALLO: As it applies to each and every slate that I review, especially with big states such as North Dakota where you have such vast space between each resident. One of the things that we do and we are required to look at is also making sure that we have a cross-section of individuals throughout the state.

And so with this particular slate we went as far as to take a map of North Dakota and to actually map where all of our applicants were coming from to make sure that we had a vast cross-section of applicants from across the state. So there are a lot of factors that need to be taken into consideration.

We have to abide by FACA which also requires us to look at certain factors as we are putting together our state advisory committees. And we did the best we could with this one. We did a lot of outreach and so I would ask for the Commissioners to move forward and accept this slate as well.

CHAIRMAN CASTRO: Any other discussion? Hearing none, then we'll vote on the question.

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I vote yes on the condition that we are not appointing a poet from Maine.
by mistake.

(Laughter.)

CHAIRMAN CASTRO: Oh, yes. Of course.

Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: I abstain.

CHAIRMAN CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRMAN CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLASTONEY: Yes.

CHAIRMAN CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRMAN CASTRO: I vote yes so we have one, two, three, four, five yeses and an abstention. The slate passes. Thank you.

Next item is the all-important adjournment of the meeting.

COMMISSIONER KLASTONEY: Excuse me, Mr. Chairman.

CHAIRMAN CASTRO: Oh, yes. Commissioner Kladney.

COMMISSIONER KLASTONEY: I would note that this is the last meeting of Commissioner Gaziano's term
and I would like to thank him for his service here on the
Commission should he not return.

CHAIRMAN CASTRO: Indeed. I second that motion.

STAFF DIRECTOR SALLO: Thank you, Todd.

CHAIRMAN CASTRO: Thank you, Commissioner Gaziano. Despite our word sparing today, you'll be
missed.

COMMISSIONER GAZIANO: Thank you all very much.

CHAIRMAN CASTRO: Thank you.

COMMISSIONER ACHTENBERG: Thank you, Todd.

IV. ADJOURN MEETING

CHAIRMAN CASTRO: So we have a motion to adjourn. Is there a second?

COMMISSIONER KLABNEY: Second.

CHAIRMAN CASTRO: All those in favor say aye.

COMMISSIONERS: Aye.

CHAIRMAN CASTRO: Thank you. See you next
month. For the record, Commissioner Heriot votes no on
the motion to adjourn.

COMMISSIONER HERIOT: As always.

(Whereupon, at 10:23 a.m. the meeting was
adjourned.)