

U.S. COMMISSION ON CIVIL RIGHTS

+ + + + + **EDITED**

MEETING

+ + + + +

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 KLADNEY, Commissioner

MICHAEL YAKI, Commissioner *

MARLENE SALLO, Staff Director

JENNIFER CRON HEPLER, Solicitor, Parliamentarian

* via telephone

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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

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

(9:35 a.m.)

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 KLADNEY: Second.

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

4 COMMISSIONERS: Aye.

5 CHAIRMAN CASTRO: Any opposed? Any
6 abstentions? Okay. The motion passes unanimously.
7 Before we proceed to the formal agenda, I would like to
8 add a few remarks.

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

14 Welcome back.

15 COMMISSIONER HERIOT: Thank you, Mr.
16 Chairman.

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

24 And I think the words of Nelson Mandela that
25 are most apropos to the work that we do here at the

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1 Commission is his quote that says, "It is intolerable and
2 unacceptable that the cancer of racism is still eating
3 away at the fabric of societies in different parts of our
4 world.

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

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

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

20 **II. MANAGEMENT AND OPERATIONS**

21 **STAFF DIRECTOR'S REPORT**

22 STAFF DIRECTOR SALLO: Thank you,
23 Chairman. The report will not be as long as last month
24 but I followed the same format in referring to our
25 strategic goals and objectives as I go through the

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1 report.

2 But prior to that, I wanted to advise the
3 Commission that our two interns from the OGC office,
4 Raziya Brumfield and Kristin Stitcher, they are no longer
5 with us. They completed their fall 2013 legal
6 internships. In the audience today we have Richard Ahne
7 and he is completing his internship today.

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

15 CHAIRMAN CASTRO: Can I just add something?

16 STAFF DIRECTOR SALLO: Oh, sure.

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

24 STAFF DIRECTOR SALLO: Richard came to us
25 from the Hill. He had an internship there as well. So

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1 I recently went up to the Hill just to gather information
2 on Stand Your Ground and I brought him with me and he was
3 extremely helpful while we were up there. He was raring
4 to go. He did a lot of the background research for us
5 so he will be missed.

6 CHAIRMAN CASTRO: Thank you.

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

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

23 As it applies to the outstanding reports
24 that we currently have in the pipeline, we did receive
25 rebuttal for the EEOC report as well as the Eminent Domain

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1 report. I did disseminate that yesterday. My
2 apologies. I should have done it earlier in the week.

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

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

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

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

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

20 CHAIRMAN CASTRO: In a bad way?

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

23 (Laughter.)

24 STAFF DIRECTOR SALLO: Okay. I will
25 forward that.

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1 Then we also have the trafficking and the
2 post-9/11 report. I did give it to the copy editor so
3 she could adjust the margins and everything. I read it.
4 I'm in the process of making some tweaks and then I will
5 disseminate it to the Commissioners for review and for
6 any edits that they may have.

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

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

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

25 If you reviewed the report from the Office

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

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

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

23 And our SAC members continue to meet as best
24 as they can telephonically. We do have a 1-800 number
25 that the SAC members have access to so that they can hold

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1 telephonic meetings and that number allows our members
2 to also receive a transcript of each meeting that they
3 hold telephonically which then can be uploaded onto our
4 FACA database which is a requirement so that we can keep
5 track of all of the activities of the SACs.

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

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

22 That's my report.

23 CHAIRMAN CASTRO: Any questions for the
24 Staff Director?

25 COMMISSIONER GAZIANO: Mr. Chair.

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1 CHAIRMAN CASTRO: Commissioner Gaziano.

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

5 STAFF DIRECTOR SALLO: Yes, sir.

6 COMMISSIONER GAZIANO: If that's
7 appropriate.

8 CHAIRMAN CASTRO: Yes, please.

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

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

16 COMMISSIONER GAZIANO: Okay. Well, I
17 don't necessarily mean to hold him up unless we in our
18 discussion today suggest that is appropriate. But at
19 the last meeting I asked you about the observance of our
20 rule. It's actually an AI, A I1-16. I didn't know that
21 -- actually Section 2.03 -- that the Commission has 30
22 days to -- the Commissioners, I should say, have 30 days
23 to review an intended appointment by the staff director
24 of the general counsel or the deputy staff director and
25 vote to disapprove.

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1 And your comment at that time was that this
2 had been changed from a political appointment to a career
3 appointment. My review of the AI suggests no
4 distinction is inherent in the AI. And I'll read it for
5 the other Commissioners. If the gentleman was already
6 on the job, I'm not sure I would have suggested to try
7 to unscramble that egg.

8 But anyway, the AI reads, "The Staff
9 Director shall submit the names of any individuals whom
10 he/she proposes to appoint as Deputy Staff Director or
11 General Counsel to the Commission. During the period of
12 30 calendar days after such submission, the Commission
13 by a vote of majority may reject such proposed
14 appointments. If the Commission fails to act during
15 such periods, the Staff Director thereafter may proceed
16 with the appointment."

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

22 And so -- then the final point I'll just make
23 is I think given the importance of the General Counsel
24 in providing the Commission advice and individual
25 Commissioners advice from time to time, it would be a good

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1 policy, at least, to allow Commissioners to meet the
2 candidate or have met the candidate. Anyway, I kind of
3 want to throw that out for your reflection and whether
4 you had looked at that language since the last meeting
5 and have had any thoughts on whether there's a way to
6 observe it in some manner.

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

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

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

23 COMMISSIONER GAZIANO: Again, I'm not sure
24 that I see the AI is inconsistent with a career service
25 hire. And I'll let other Commissioners comment or other

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1 Commissioners decide if they would like an opportunity
2 to meet with the General Counsel. I would think we might
3 want our thoughts on such candidates and I'm really
4 raising this more going forward as far as trying to make
5 sure the AIs not looking for conflicts in AIs and other
6 regulations but always looking to observe the AIs.

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

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

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

25 I think those of you who have been involved

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1 in federal government for the longest time know that it
2 is inappropriate for us as political appointees to engage
3 in any process that impinges on the hiring of career
4 employees which this General Counsel is. What the AI may
5 say is not in my estimation something that is legally
6 allowed for us as Commissioners.

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

13 CHAIRMAN CASTRO: Commissioner Heriot.

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

21 It's not at all clear to me that the AI is
22 in conflict with the law but if we don't like it, then
23 we need to change it and that has to be done by the vote
24 of the Commission. And so, I think it's very important
25 that we at least get an understanding that unless that

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1 AI is changed, if this issue comes up again, we have to
2 take a much more careful look at whether this AI is within
3 the law.

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

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

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

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

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1 meeting to get to know him.

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

6 (Laughter.)

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

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

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

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

19 COMMISSIONER GAZIANO: Okay.

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

23 STAFF DIRECTOR SALLO: No.

24 CHAIRMAN CASTRO: Thank you, Commissioner.
25 We're going to move on to the formal agenda now which is,

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1 of course, reviewing some State Advisory Committees.

2 **III. STATE ADVISORY COMMITTEE (SAC) APPOINTMENTS**

3 **DELAWARE**

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

9 Olga Ramirez, Enid D. Wallace-Simms, Lydia
10 S. Cox, Susan M. Dixon, Michael D. Fleming, Joel E.
11 Friedlander, Lisa B. Goodman, Patricia C. Johnson,
12 Barrett E. Kidner, Rashmi Rangan, and Leland B. Ware.

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

19 Do I have a second?

20 COMMISSIONER ACHTENBERG: Second.

21 CHAIRMAN CASTRO: Okay. Any discussion?
22 None. Okay. We'll take a vote.

23 Commissioner Heriot, how do you vote?

24 COMMISSIONER HERIOT: Yes.

25 CHAIRMAN CASTRO: Commissioner Gaziano,

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1 how do you vote?

2 COMMISSIONER GAZIANO: Yes.

3 CHAIRMAN CASTRO: Commissioner
4 Achtenberg, how do you vote?

5 COMMISSIONER ACHTENBERG: Yes.

6 CHAIRMAN CASTRO: Commissioner Kladney,
7 how do you vote?

8 COMMISSIONER KLADNEY: Yes.

9 CHAIRMAN CASTRO: Commissioner Yaki, how
10 do you vote?

11 COMMISSIONER YAKI: Aye.

12 CHAIRMAN CASTRO: As do I and so the slate
13 passes unanimously.

14 **GEORGIA**

15 CHAIRMAN CASTRO: I am now going to make a
16 motion that the Commission appoint the following
17 individuals to the Georgia State Advisory Committee
18 based upon the recommendation of our Staff Director.

19 Samuel C. Burch --

20 COMMISSIONER GAZIANO: Mr. Chair, are you
21 on the mic? I can barely hear you now.

22 CHAIRMAN CASTRO: My mic went off. Sorry
23 about that.

24 COMMISSIONER GAZIANO: Okay. That's
25 fine.

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1 CHAIRMAN CASTRO: Let me start again. I'm
2 now moving onto the Georgia SAC. I'm going to make a
3 motion that the Commission appoint the following
4 individuals to the Georgia State Advisory Committee
5 based upon the recommendation of our Staff Director.

6 Samuel C. Burch, Constance W. Curry, Julius
7 Wayne Dudley, Geraldo E. Gonzalez, Joseph M.
8 Knippenberg, Peter A. Lawler, John W. Mayes, Jamala S.
9 McFadden, Justin A. Pressley, Arch Y. Stokes, Jeffrey L.
10 Tapia, Helen Butler, Stephanie Woods Miller, and C.
11 Melody Rodriguez.

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

18 Do we have a second on my motion?

19 COMMISSIONER KLADNEY: Second.

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

22 CHAIRMAN CASTRO: Go ahead.

23 COMMISSIONER GAZIANO: I move to sever Mr.
24 Gonzalez from the list and I would like to address that.
25 It's in our practice, or at least Commission Yaki has

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1 argued, that the severance doesn't need to be voted on.

2 CHAIRMAN CASTRO: Could you repeat that?

3 I'm sorry.

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

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

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

13 CHAIRMAN CASTRO: Is there a second to that
14 motion?

15 COMMISSIONER HERIOT: I'll second it.

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

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

24 CHAIRMAN CASTRO: Let's deal with it today.

25 COMMISSIONER GAZIANO: Sure. Our record

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1 from the August 17, 2012 briefing where Mr. Gonzalez was
2 a witness we had to ask him to change his statement
3 because he engaged in ad hominem attacks against fellow
4 witnesses. He compared fellow panelists to Ku Klux Klan
5 and Neo-Nazis and --.

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

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

12 CHAIRMAN CASTRO: Do you understand that,
13 Commission Gaziano?

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

16 COMMISSIONER ACHTENBERG: We couldn't hear
17 anything.

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

20 PARTICIPANT: No.

21 COMMISSIONER GAZIANO: No.

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

25 Why don't you use that microphone?

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1 MS. HEPLER: Can you hear me now?

2 COMMISSIONER GAZIANO: Yes, I can hear now.

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

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

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

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

17 MS. HEPLER: Right.

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

20 COMMISSIONER GAZIANO: It's impossible to
21 take it out of our head and so based on what is in my head
22 --

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

25 COMMISSIONER GAZIANO: Oh, okay. Well, he

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1 engaged in ad hominem attacks. But in his statement that
2 is filed and is on the Internet he still engaged in ad
3 hominem attacks.

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

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

18 MS. HEPLER: The defame and degrade doesn't
19 mean -- that's an internal GC issue. Okay? So please
20 --

21 COMMISSIONER GAZIANO: Listen.

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

25 COMMISSIONER GAZIANO: I'm not saying what

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1 your opinion was. I'll tell you what my opinion was. He
2 still violated it. But regardless of whether he
3 violated it, he still engaged in ad hominem attacks
4 against others in his statement including fellow
5 panelists who he disagreed with.

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

15 STAFF DIRECTOR SALLO: May I --

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

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

22 COMMISSIONER GAZIANO: You're now --

23 CHAIRMAN CASTRO: Let me finish. Let me
24 finish.

25 COMMISSIONER GAZIANO: The General

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1 Counsel --

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

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

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

20 Now, it seems that your position on the
21 First Amendment has become malleable. I would say that
22 in this instance Mr. Gonzalez did exactly that. He acted
23 appropriately and constructively when he and others were
24 given a comment about taking care to express how they
25 express themselves. What he said at that meeting is

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1 protected by his First Amendment rights and you as a
2 champion of that I would expect you to understand that.

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

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

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

16 COMMISSIONER GAZIANO: Let me respond to
17 your points.

18 CHAIRMAN CASTRO: Go ahead.

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

24 Secondly, I think your characterization of
25 my First Amendment views, although somewhat

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1 oversimplified actually supports what I'm saying.
2 Certainly the schools can ask kids to engage in dialogue
3 in a respectful manner. And we have that responsibility
4 when considering SAC members.

5 That's been a ground for us to reject SAC members in the
6 past and I supported that regardless of what their view
7 is.

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

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

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

21 STAFF DIRECTOR SALLO: I would like to
22 remind everyone is that our regional directors work with
23 each and every one of our SAC members on a daily basis.
24 I have absolute trust in each of my regional directors
25 and the folks that they put forth as reappointments.

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1 I know for a fact that they would not
2 reappoint someone, and Mr. Gonzalez is a reappointment,
3 if they felt in any way, shape, or form that this
4 individual could not be impartial at any of the meetings
5 or they felt that the individual throughout their
6 two-year tenure had in any way, shape, or form obstructed
7 anything that was trying to be done or at some point in
8 time failed to cooperate with other members of the SAC
9 that were of a different opinion than he is.

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

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

22 CHAIRMAN CASTRO: Okay. Anyone else?

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

25 CHAIRMAN CASTRO: Yes, Commissioner.

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

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

23 CHAIRMAN CASTRO: Thank you, Commissioner.
24 I'm going call this motion to sever for a vote. I vote
25 no.

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1 CHAIRMAN CASTRO: Commissioner Heriot, how
2 do you vote?

3 COMMISSIONER HERIOT: Yes.

4 CHAIRMAN CASTRO: Commissioner Gaziano,
5 how do you vote?

6 COMMISSIONER GAZIANO: Yes.

7 CHAIRMAN CASTRO: Commissioner
8 Achtenberg, how do you vote?

9 COMMISSIONER ACHTENBERG: No.

10 CHAIRMAN CASTRO: Commissioner Kladney,
11 how do you vote?

12 COMMISSIONER KLADNEY: No.

13 CHAIRMAN CASTRO: Commissioner Yaki, how
14 do you vote?

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

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

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

23 Commissioner Heriot, how do you vote?

24 COMMISSIONER HERIOT: Aren't we going to
25 have a discussion?

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1 CHAIRMAN CASTRO: I thought we just did.
2 Do you have some other folks you want to discuss?

3 COMMISSIONER HERIOT: Not individually.

4 CHAIRMAN CASTRO: Okay.

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

9 CHAIRMAN CASTRO: Any other comments?

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

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

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

23 It was sent back before to make sure that
24 it was more balanced as it applied to male/female and we
25 have now been able to do that. There was extensive

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1 outreach. We received names also that we considered to
2 add on. And I would ask the Commissioners to please move
3 forward and not hold up the Georgia slate.

4 CHAIRMAN CASTRO: Okay. Any other
5 comments?

6 COMMISSIONER HERIOT: Mr. Chairman.

7 CHAIRMAN CASTRO: Yes, ma'am.

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

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

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

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

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1 I'm going to call this motion for vote and
2 do a roll call.

3 Commissioner Heriot, how do you vote?

4 COMMISSIONER HERIOT: I vote no.

5 CHAIRMAN CASTRO: Commissioner Gaziano,
6 how do you vote?

7 COMMISSIONER GAZIANO: No.

8 CHAIRMAN CASTRO: Commissioner Achtenberg,
9 how do you vote?

10 COMMISSIONER ACHTENBERG: Yes.

11 CHAIRMAN CASTRO: Commissioner Kladney,
12 how do you vote?

13 COMMISSIONER KLADNEY: Yes.

14 CHAIRMAN CASTRO: Commissioner Yaki, how
15 do you vote?

16 COMMISSIONER YAKI: Aye.

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

19 I am now going to move on to North Dakota.

20 **NORTH DAKOTA**

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

25 Dr. Cheryl Ann Longfeather Kerry, Cheryl

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1 Bergian, Marc S. Bluestone --

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

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

6 STAFF DIRECTOR SALLO: Yes.

7 CHAIRMAN CASTRO: Let me reread that. Dr.
8 Cheryl Ann Kerry. Longfeather is another person.
9 Cheryl Bergian, Marc S. Bluestone, Crystal Dueker, Carol
10 Eve Good Bear, Dr. Robert S. Herren, Stephanie A.
11 Johnson, David A. Meier, Constance L. Nelson, Refugio
12 "Pete" Padilla, and Jordan T. Schuetzle.

13 STAFF DIRECTOR SALLO: There's three more.

14 CHAIRMAN CASTRO: Sandra J. Boehler, David
15 J. Lanpher, and Mark F. Tobin. Pursuant to this motion
16 the Commission appoints Dr. Cheryl Ann Long - no, Dr.
17 Cheryl Ann Kerry Longfellow -- Longfeather.

18 STAFF DIRECTOR SALLO: Yes.

19 CHAIRMAN CASTRO: Dr. Cheryl Ann
20 Longfeather Kerry.

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

23 CHAIRMAN CASTRO: Dr. Cheryl Ann
24 Longfeather Kerry as Chair of the North Dakota State
25 Advisory Committee. These members will serve as

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1 uncompensated government employees. Under this motion
2 the Commission authorizes the Staff Director to execute
3 the appropriate paperwork for the appointments.

4 Is there a second on that motion?

5 COMMISSIONER KLADNEY: Second.

6 CHAIRMAN CASTRO: Thank you. Any
7 discussion?

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

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

24 STAFF DIRECTOR SALLO: May I?

25 CHAIRMAN CASTRO: Yes, Madam Staff

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1 Director.

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

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

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

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

23 Commissioner Heriot, how do you vote?

24 COMMISSIONER HERIOT: I vote yes on the
25 condition that we are not appointing a poet from Maine

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1 by mistake.

2 (Laughter.)

3 CHAIRMAN CASTRO: Oh, yes. Of course.

4 Commissioner Gaziano, how do you vote?

5 COMMISSIONER GAZIANO: I abstain.

6 CHAIRMAN CASTRO: Commissioner Achtenberg,
7 how do you vote?

8 COMMISSIONER ACHTENBERG: Yes.

9 CHAIRMAN CASTRO: Commissioner Kladney,
10 how do you vote?

11 COMMISSIONER KLADNEY: Yes.

12 CHAIRMAN CASTRO: Commissioner Yaki, how
13 do you vote?

14 COMMISSIONER YAKI: Aye.

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

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

20 COMMISSIONER KLADNEY: Excuse me, Mr.
21 Chairman.

22 CHAIRMAN CASTRO: Oh, yes. Commissioner
23 Kladney.

24 COMMISSIONER KLADNEY: I would note that
25 this is the last meeting of Commissioner Gaziano's term

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1 and I would like to thank him for his service here on the
2 Commission should he not return.

3 CHAIRMAN CASTRO: Indeed. I second that
4 motion.

5 STAFF DIRECTOR SALLO: Thank you, Todd.

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

9 COMMISSIONER GAZIANO: Thank you all very
10 much.

11 CHAIRMAN CASTRO: Thank you.

12 COMMISSIONER ACHTENBERG: Thank you, Todd.

13 **IV. ADJOURN MEETING**

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

16 COMMISSIONER KLADNEY: Second.

17 CHAIRMAN CASTRO: All those in favor say
18 aye.

19 COMMISSIONERS: Aye.

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

23 COMMISSIONER HERIOT: As always.

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

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