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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 9:30 a.m., MARTIN R. CASTRO, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman  
ABIGAIL THERNSTROM, Vice Chair  
ROBERTA ACHTENBERG, Commissioner  
TODD F. GAZIANO, Commissioner  
GAIL L. HERIOT, Commissioner  
PETER N. KIRSANOW, Commissioner (via telephone)  
DINA TITUS, Commissioner  
KIMBERLY TOLHURST, Delegated Authority of the Staff Director
STAFF PRESENT:

JORDYNE BLAISE
THERESA BROOKS
CHRISTOPHER BYRNES, Senior

Attorney-Adviser to the Office of the

Staff Director

DEMITRIA DEAAS
ALFREDA GREENE
TINALOUISE MARTIN, Director, OM
LENORE OSTROWSKY, Acting Chief, PAU
JOHN RATCLIFFE, Chief, Budget and Finance
MICHELLE RAMEY-YORKMAN
MICHELE ROYSTER
EILEEN RUDERT
DAVID SNYDER, Attorney-Adviser
VANESSA WILLIAMSON
AUDREY WRIGHT

COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTON
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
ALISON SOMIN
<table>
<thead>
<tr>
<th>AGENDA ITEM</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. Approval of Agenda</td>
<td>5</td>
</tr>
<tr>
<td>II. Management and Operations</td>
<td>14</td>
</tr>
<tr>
<td>- Staff Director's report</td>
<td>14</td>
</tr>
<tr>
<td>III. Ethics Officer Presentation</td>
<td>19</td>
</tr>
<tr>
<td>IV. Program Planning</td>
<td>21</td>
</tr>
<tr>
<td>- Update on Inter-student Violence Report</td>
<td>22</td>
</tr>
<tr>
<td>V. State Advisory Committee Issues</td>
<td>61</td>
</tr>
<tr>
<td>- Re-chartering the Alabama SAC</td>
<td>61</td>
</tr>
<tr>
<td>- Re-chartering the Illinois SAC</td>
<td>90</td>
</tr>
<tr>
<td>- Re-chartering the Minnesota SAC</td>
<td>102</td>
</tr>
<tr>
<td>VI. Approval of March 11, 2011 Meeting Minutes</td>
<td>109</td>
</tr>
</tbody>
</table>
CHAIRPERSON CASTRO: Before we all have to go on furlough, we’re going to call the meeting to order at I believe 9:38 is the exact time on April 8, 2001.

This is a business meeting of the U.S. Commission on Civil Rights. The meeting is taking place here at the Commission headquarters located at 624 9th Street, Northwest in Washington, D.C.

I am Chairman Marty Castro. The commissioners who are present in the room with us today include myself, our Vice Chair Thernstrom, Commissioner Gaziano, Commissioner Heriot, Commissioner Titus, and Commissioner Achtenberg, and Commissioner Kirsanow is participating by phone.

Do we need a motion to allow him to participate by phone? No? Okay. Based on that, a quorum of the commissioners is present.

And the person delegated with the authority of the Staff Director, are you present?

ACTING STAFF DIRECTOR TOLHURST: I am, just barely.

CHAIRPERSON CASTRO: Is the Court Reporter present?
THE REPORTER: I am.

CHAIRPERSON CASTRO: Yes. Okay. So the meeting will come to order.

I. APPROVAL OF AGENDA

CHAIRPERSON CASTRO: The first item on our agenda is the approval of the agenda. Do we have any motions to amend the agenda?

COMMISSIONER HERIOT: Mr. Chairman, I've got a motion to amend the agenda. This motion was handed out in electronic form a few days ago. I believe that this morning each member of the commission who was present here was given a hard copy of the motion.

I would like to amend the agenda to include a discussion of providing the sex discrimination and admissions project. And during that discussion, I would plan to offer a motion to revive that project or a motion to make the data collected for that project available to the public.

I think we made a mistake in canceling this project. And, looking back at the transcripts of our earlier meetings, the problems that some members of the Commission thought that the project had, these problems were already acknowledged early on. And I think that that has been detailed here in the written
motion, which I assume everyone has had a chance to
look at.

CHAIRPERSON CASTRO: Okay. Commissioner,
you have motion to amend the agenda. So let's get a
second on that motion and deal with --

COMMISSIONER GAZIANO: Second.

CHAIRPERSON CASTRO: Okay. So we have a
motion to amend the agenda pending before us. Do you
have a discussion on the motion to amend? Yes?

COMMISSIONER GAZIANO: Yes I have a
procedural reason to want a fuller discussion and a
substantive one. The procedural matter that I raised
previously with you, Mr. Chairman, is that there's
been some discussion about what our practice is in
sharing motions with each other in anticipation of
meetings to give each other at least a reasonable
notice so that they can prepare for that discussion.

Some have said that unless an important
substantive motion is circulated seven days in advance
of a meeting, it should be out of order. I disagreed
with that, but I think that the unanimous view of the
Commission in the past -- and I hope it is one that we
all would agree with today -- is that we have to
provide at least as much reasonable notice as we can
to each other of a substantive motion that would
The motion last month to kill this 18-month investigation, there was no notice provided. And, quite frankly, I was caught by surprise. I think Commissioner Heriot was caught by surprise. And Commissioner Kirsanow can speak for himself. But given that they were the two who were serving on the subcommittee, I think some of the arguments that were made in support of killing it were -- you needed some additional studies.

So that's why I think that we need -- let me kill that. I'm sorry. I'll turn off that -- need some further discussion. My substantive argument is I don't think that we properly considered the implications of the precedent that we would set if we killed the sex discrimination investigation on the grounds that were offered by those who supported it, including that there were data imperfections, data inconsistencies.

So I think that this is certainly worthy of a discussion. And that's all that I ask for from the Commission.
COMMISSIONER HERIOT: A couple of things to add. One, let the record reflect when Commissioner Gaziano said, "Let me kill that," he did not mean his previous remarks. He meant his Blackberry.

COMMISSIONER GAZIANO: Indeed.

(Laughter.)

COMMISSIONER HERIOT: And, second, just the particular arguments that were made for killing this particular project, you know, some people were concerned that a few of the schools were not likely to turn up statistically significant evidence. That was already anticipated at the time that this study was adopted.

Dr. Lerner, who has since passed away, is the one who designed this, this study. And I know he was very, very interested in it and considered it something that was important to him. At the time he was working on it, the last thing he said to me was that this study was what was keeping him going. And I know I would like to have it get finished.

He understood that there would likely be some schools that were not going to deliver significant data to us. And that's why he wanted to do I think he said 15 at the time were originally talked about it in the meeting. We ended up doing 18.
He was hoping to get 10 or 12 out of those, and we've got more than that at this point.

But, again, the reason that a large number of schools were studied was precisely because there was going to be a likelihood that some of them would not completely pan out.

As for looking at schools in a particular geographic location, it was at the time far more important, continues to be far more important that you have different kinds of schools, rather than different parts of the country that are concerned. That's why he designed it the way that he did, and I think it is the right design.

ACTING STAFF DIRECTOR TOLHURST: I have some comments as well, but I think just a motion to put on the --

CHAIRPERSON CASTRO: Yes, yes.

COMMISSIONER GAZIANO: May I ask you --

CHAIRPERSON CASTRO: I'm going to -- I'm sorry?

COMMISSIONER GAZIANO: Mr. Chair, I just didn't hear whether Commissioner Kirsanow was actually -- Commissioner Kirsanow, if you are on the line, would you respond?

COMMISSIONER KIRSANOW: Yes, I am.
COMMISSIONER GAZIANO: Okay. Just wanted to know that you are with us. Thank you.

CHAIRPERSON CASTRO: I did ask him earlier.

COMMISSIONER GAZIANO: I didn't hear. Okay. Sorry.

CHAIRPERSON CASTRO: I understand what you're saying. And we are just voting on the motion to amend at this point, but I did this. You know, we had some e-mail exchanges last week about this as well. And, as I said then and I'll repeat now, I looked thoughtfully at rereading Mr. Byrnes' report last time, upon which the vote was based at the last meeting.

I looked back on the minutes of our last meeting, actually also minutes of prior meetings, and looked at other summaries of the report and thoughtfully have looked at this motion and its underlying memo in support of it. And, you know, I don't see anything here that changes the decision we made before.

So, as I said, then, I don't see that this is something that should be on our agenda.

Unless anyone else has a comment on that, I would like to call the question and vote on your
motion to amend.

COMMISSIONER KIRSANOW: Mr. Chair, I do have a comment.

CHAIRPERSON CASTRO: Sure, Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I would like to argue in favor of putting it on the agenda for further discussion. And one of the reasons, therefore, in addition to the reasons mentioned by Commissioners Gaziano and Heriot is that it clearly in my estimation is an important inquiry, but it is also an inquiry from which we have devoted a certain amount of resources over the last 16 to 18 months, not the least of which is Commission staffing resources.

It's not to say that at any given time, they can't decide as a body to go in a different direction. But given the fact that we have the very, very limited budget, that we've got limited resources and limited staff, it seems to be an unfortunate and colossal waste of our resources to abandon the investigation that is fairly far down the road and really just requires the coalitions of data that analysis is in writing the report.

So, again, I would argue in favor of putting this on the agenda.
CHAIRPERSON CASTRO: Thank you, Commissioner Kirsanow.

I am going to call the question. I know that resources are an issue. And expending additional resources to address some of the flaws is something that is also of concern. But we will call the question.

All those in favor of the motion? Well, let me ask you. I'll go around individually. Commissioner Heriot, how do you vote on the motion?

COMMISSIONER HERIOT: Yes

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote on the motion?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: I vote against it. Commissioner -- I should say Vice Chair Thernstrom, how do you vote on the motion?

VICE CHAIR THERNSTROM: I'm voting against it.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote on the motion?

COMMISSIONER KIRSANOW: No.

CHAIRPERSON CASTRO: Commissioner Titus, how do you vote on the motion?

COMMISSIONER TITUS: No.
CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote on the motion?

COMMISSIONER ACHTENBERG: No.

CHAIRPERSON CASTRO: The motion fails. Any other motions to amend?

(No response.)

CHAIRPERSON CASTRO: If not, then can we have a motion to --

COMMISSIONER HERIOT: I'm sorry. Did you vote?

CHAIRPERSON CASTRO: Yes, I voted no. So that motion fails. Did we vote to approve that agenda?

VICE CHAIR THERNSTROM: No, we haven't done that yet.

CHAIRPERSON CASTRO: Okay. So do we have a motion to approve the agenda?

COMMISSIONER ACHTENBERG: So moved.

CHAIRPERSON CASTRO: Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRPERSON CASTRO: All those in favor, signify by saying aye.

(Whereupon, there was a chorus of "Ayes.")

CHAIRPERSON CASTRO: Any opposed?

COMMISSIONER HERIOT: No.
CHAIRPERSON CASTRO: Commissioner Heriot is opposed. Commissioner Gaziano?
COMMISSIONER GAZIANO: No, without the amendment.
CHAIRPERSON CASTRO: Okay. Commissioner Kirsanow?
COMMISSIONER KIRSANOW: I abstain.
CHAIRPERSON CASTRO: Okay. So the motion passes.

II. MANAGEMENT AND OPERATIONS
CHAIRPERSON CASTRO: The next item on the agenda is the Management and Operations. The Staff Director, Acting Staff Director, will provide a report.

Ms. Tolhurst?

ACTING STAFF DIRECTOR TOLHURST: Thank you.

- STAFF DIRECTOR'S REPORT

ACTING STAFF DIRECTOR TOLHURST: Once again I am not going to -- unless you want me to lift the number of requests we have gotten and calls we have gotten, but I wanted to highlight a few important dates for the commissioners. One is a reminder that English-only rebuttals are due on April 15th. The second is a --
COMMISSIONER HERIOT: That's Friday, right?

CHAIRPERSON CASTRO: No. Next week, I think.

ACTING STAFF DIRECTOR TOLHURST: Yes.

COMMISSIONER HERIOT: Okay. Here's my question on that. If there's a government shutdown and I'm not allowed to work on it this weekend, do we then push it out each day that there's a shutdown?

ACTING STAFF DIRECTOR TOLHURST: My suggestion is it's per day.

COMMISSIONER HERIOT: Yes.

ACTING STAFF DIRECTOR TOLHURST: So a two-day shutdown, two-day extension.

COMMISSIONER HERIOT: Yes.

ACTING STAFF DIRECTOR TOLHURST: Is everyone amenable to that?

Second reminder is per the March 23rd e-mail that I sent out on behalf of the Chair -- and we do ask commissioners to send proposals, concept papers for the 2012 statutory report. And those are due to me by May 13th. We would like to avoid a crunch and give staff and commissioners all of the time they need to do the 2012 report. So to that end, the 13th of May is the deadline for me to receive
those. And then I will sort of collate that and send them all out to you, and you can have a discussion about those reports.

Another reminder is that your public financial disclosures are due on May 15th. We are going to have a little talk about that in a few minutes on the agenda.

Next up, OGC has been very lucky to have a contract attorney, Jordyne Blaise, join us for two months. Jordyne is in the first row there.

CHAIRPERSON CASTRO: Welcome.

ACTING STAFF DIRECTOR TOLHURST: Jordyne is a graduate of Georgetown Law. And, among her other experiences, she did intern for the Department of Education's Office on Civil Rights. So we are happy to have her help us work on the current report. Welcome.

I wanted to note that we had a SAC member who recently passed away. And I note her because Dr. Irene Hill-Smith served on the New Jersey SAC Committee for ten years and only left because she was terminated.

Dr. Hill-Smith got her elementary education in a one-room segregated schoolhouse in New Jersey and went on to receive her doctorate in
humanities from Rowan University in Glassboro, New Jersey.

She was a lifetime civil rights activist and eventually became a member of the NAACP's National Board of Directors and served as a National Vice President of NAACP from 1967 to '79.

In 1966, her leadership was recognized by President Johnson, who invited her to participate in a White House conference on civil rights. So we recognize her service and mourn her passing.

A final note. We are preparing for the furlough. Staff has received instructions regarding the same and will receive more today, our end resolution. If there is a furlough at midnight tonight, staff will report on Monday to complete shutdown only. And that will be for a half day and no more than one full day. And we have a plan that staff well understands on how to function during that shutdown and how to be notified of when to return to work.

So if people have questions about that, I can answer those.

COMMISSIONER GAZIANO: We are not essential, then?

ACTING STAFF DIRECTOR TOLHURST: You're
not essential. I'm not essential.

CHAIRPERSON CASTRO: I know. It's --

ACTING STAFF DIRECTOR TOLHURST: It's very sad.

(Laughter.)

COMMISSIONER GAZIANO: I can accept that, but --

(Laughter.)

COMMISSIONER GAZIANO: -- who or how is that determined?

ACTING STAFF DIRECTOR TOLHURST: It is determined by OPM. If you were an air traffic controller or military -- actually, if Marty Dannenfelser were here, he would have been essential because he's a salaries presidential appointee with more vacation day requirements, rather than hourly, which you all are, but an acting person in his role is not essential. So we have --

COMMISSIONER HERIOT: Oh, really? So we actually are worse off this time around than we would have been in a different --

VICE CHAIR THERNSTROM: It's not going to last long.

COMMISSIONER HERIOT: I'm not too worried.

CHAIRPERSON CASTRO: Do we have any
questions for our Acting Staff Director based on her presentation or her written report that was circulated in advance?

(No response.)

CHAIRPERSON CASTRO: Hearing none, then we will move on to the Ethics Officer presentation. Is this something you can do, at least a portion of, in open session? Do we need a closed session for this?

ACTING STAFF DIRECTOR TOLHURST: It needs a closed session.

CHAIRPERSON CASTRO: Okay. So please?

III. ETHICS OFFICER PRESENTATION

ACTING STAFF DIRECTOR TOLHURST: Okay. As General Counsel, I certify that this meeting can be closed and --

COMMISSIONER HERIOT: You wear different hats, too?

ACTING STAFF DIRECTOR TOLHURST: As General Counsel --

(Laughter.)

ACTING STAFF DIRECTOR TOLHURST: -- I certify that this meeting can be closed and the information pertaining to the same may be withheld pursuant to the following exemptions provided for in Commission regulations at 45 CFR 702.53. That's
exemption 2, when a meeting is likely to disclose information relating solely to internal personal rules of the Commission.

And then what you would do is take a vote on that.

CHAIRPERSON CASTRO: Okay.

ACTING STAFF DIRECTOR TOLHURST: And then you will announce who may stay in the room.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER GAZIANO: Could we hear who you propose or who we propose to stay in the room? Is it possible that our special assistants can remain?

CHAIRPERSON CASTRO: Yes, that's contemplated.

ACTING STAFF DIRECTOR TOLHURST: They are also a public financial filer. So they should stay in the room.

CHAIRPERSON CASTRO: Okay. So let's take a vote on the motion to go into closed session. All those in favor say aye.

(Whereupon, there was a chorus of "Ayes.")

CHAIRPERSON CASTRO: Any opposed?

(No response.)

CHAIRPERSON CASTRO: Any abstentions?

(No response.)
CHAIRPERSON CASTRO: No? So it's unanimous.

(whereupon, the foregoing matter went off the record at 9:52 a.m. and reconvened in executive session. The open session was reconvened at 10:43 a.m., as follows.)

CHAIRPERSON CASTRO: Okay. Here comes the public. Commissioner Kirsanow, are you still there?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Okay. Welcome back, everyone. Thank you. And apologies for having to step out. We're back in session in order.

IV. PROGRAM PLANNING

CHAIRPERSON CASTRO: Next on the agenda is an update on our statutory report under "Program Planning." Does the Acting General Counsel have any information for us?

ACTING STAFF DIRECTOR TOLHURST: I do.

COMMISSIONER GAZIANO: How about the Acting Staff Director?

CHAIRPERSON CASTRO: Did I say General Counsel?

COMMISSIONER GAZIANO: You did.

CHAIRPERSON CASTRO: I'm sorry. Staff Director.
COMMISSIONER GAZIANO: I just want to know under each capacity.

ACTING STAFF DIRECTOR TOLHURST: The General Counsel.

CHAIRPERSON CASTRO: Okay. This is your General Counsel capacity. Okay. I had it right, for the record.

- UPDATE ON INTER-STUDENT VIOLENCE REPORT

ACTING STAFF DIRECTOR TOLHURST: I'm going to give an abbreviated little update. I assume there will be some questions. Basically some thought went into these, and the project proposal was approved. That was on March 11th.

On March 15th, OGC distributed a project proposal and timeline. The timeline is extremely aggressive and puts extreme demands on staff.

On March 18th, OGC served discovery on the Departments of Education and Justice. Discovery is due to OGC April 18th, barring shutdown. And, similarly, they are giving a day-per-day extension on their discovery if needed.

On March 18th also, OGC provided commissioners with copies of those requests.

We will have a briefing on May 13th. And we currently have 17 confirmed panelists. Actually, I
believe that's 18 now. And that would be out of 20. Commissioners will receive an initial draft.

CHAIRPERSON CASTRO: Any questions? Commissioner Gaziano?

COMMISSIONER GAZIANO: Since this is our first meeting after the time line was proposed -- well, first of all, before I say that, I do want to commend the Acting General Counsel, Acting Staff Director, and all of the staff involved. This is a switch that I was not necessarily in favor of, but it does seem like you have all been doing a great job under the constraints.

I did want to draw to the other commissioners' attention a few issues under the timeline. And I suppose there's no good answer given where we are in the process right now, but I do want to draw one particular problem I think to your all's attention and see if we can figure out an adjustment together.

There is no opportunity in the current timeline for the staff to receive comments from commissioners on what is now called the final draft, but we typically have always had a second draft and prior to the vote.

And they were going to receive an initial
draft, which is going to be very difficult for staff seven days after the briefing. I assume they are already working or will already be working on the report prior to the briefing.

But that initial draft may have a lot more issues that we will address. We will provide our comments to the staff. And then they will circulate what is now called the final draft on July 29. And we're supposed to vote roughly two weeks later on it.

That final, what's now called that final, draft, maybe I've convinced the staff in my comments to completely cut. You know, they've been completely convinced by Pete and I to cut. And then the final draft is supposedly circulated to us.

And we have no option, then, on August 12 under this schedule but to vote it up or down. That's kind of -- that doesn't provide a very good fail-safe mechanism. So I'm wondering if we can get a second, what we'll call second, draft a little earlier. And we've always had that in a period where commissioners can then -- by the way, some of what we notice are just nits.

You don't have citations here. We want to clean up the -- now we can do that in the final Commission vote, too. We can approve those. But we
don't want to be making too many substantive changes on the day that we need to approve that.

ACTING STAFF DIRECTOR TOLHURST: Let me say what was skipped versus the last report, you are missing something. Actually, what is being cut is the first item, which would have been the annotated outline on --

COMMISSIONER GAZIANO: We are skipping a few things. But I think we can --

ACTING STAFF DIRECTOR TOLHURST: It turns out that now --

COMMISSIONER GAZIANO: Yes. I think we can --

ACTING STAFF DIRECTOR TOLHURST: -- you would have gotten a copy.

COMMISSIONER GAZIANO: Right.

ACTING STAFF DIRECTOR TOLHURST: You were missing one thing. And I skipped. What I chose to skip was the first thing, the annotated outline.

COMMISSIONER GAZIANO: And I think we can do without that.

ACTING STAFF DIRECTOR TOLHURST: And after the annotated outline, actually, what did happen under last year's report was then the draft and the final draft.
So in terms of giving you drafts, the only piece I skipped was the annotated outline. Let me say again I under direction of commissioner vote proposed this timeline, which is horrible, but it's what gets it done on time. And I know that that first set is being cut. And if commissioners vote to change that, we'll abide by whatever you all vote on.

This is what lets us get it done by the due date. If commissioners choose that as a priority, we have half the time that we're supposed to have to do this and a third of the staff. This is the timeline that lets us get it done only by asking staff working for me to go to pretty extreme lengths to get it done.

And I want to talk about the briefing a little bit, too. When you look back at the paths for statutory reports, they actually contain no summary of the briefing. I would like to change that in the future because to me, that is one of the points worth having the briefing is to have that information.

The desegregation report actually had no briefing. It got fogged out and the nature was not to reschedule it.

And then the last three reports, they had a briefing. The briefing was not at all cited in the
report in a few citations. I hope and plan, if at all possible, to have an appendix to this report that is a briefing summary. You know, usually when you have a briefing outside of this report, you have a briefing report devoted just to that briefing.

That has not happened with our past four statutory reports. And certainly for 2012, assuming everyone votes on the topic, you will want to do that. And here I am proposing to try to add more information from the briefing into an appendix to provide a summary, "Here is what speaker said," that type of thing.

But what has been cut? What has been cut most drastically is staff time at every step, but what has been cut is there is one part on what I gave commissioners. And what I chose to cut was that first annotated outline, rather than one of the two drafts because I think drafts are more important.

COMMISSIONER GAZIANO: Without going back exactly, I think we did have an opportunity to provide comments, even on what was called the final draft, that those be incorporated and recirculated. But without even arguing because when will you provide, for example, the copy to the agency for affected agency review? I don't see that in the schedule, but
you must have that in mind.

ACTING STAFF DIRECTOR TOLHURST: Sure. So

---

COMMISSIONER GAZIANO: Does everyone have

a ---

CHAIRPERSON CASTRO: I don't have that

with me. We received it, but I didn't bring it with

me.

COMMISSIONER GAZIANO: I don't know how

long. I can go over some of the critical --

ACTING STAFF DIRECTOR TOLHURST: Sure.

COMMISSIONER GAZIANO: -- or whether we

could photocopy this to share.

ACTING STAFF DIRECTOR TOLHURST: We can.

I'll tell you. What I did was used our AI for

editorial and legal sufficiency, and I did give people

the minimum time under the AI, but I did -- here's the

AI, affected agency review. You will have that for --
it's either two or three weeks.

COMMISSIONER GAZIANO: Okay. Well, we

will receive the first draft May 20. We are to give

our comments back May 31. And then the so-called

final is almost two months later, July 29th. But the

affected agencies will get a copy that incorporates

ours some two, three weeks or so before that.
And what I'm wondering is if we can't receive the copy and we'll call that near final draft. I don't care what we call it, but we have some time to comment on that second draft. And then it's recirculated at some point prior to our final vote.

CHAIRPERSON CASTRO: And here's what I don't want to happen. And maybe you're not suggesting this, but I just want to make clear I don't want to do anything that is going to put us behind in getting this report done to Congress on time and to meet the outline, the dates in the outline there. Thank you.

And, to that point, I know we're going to talk about it in a second. You know, realize that even the public comment part of it extended beyond the draft period, the report being done. So, you know, we want to make that adjustment as well to comply with the timetable here. So with that suggestion that you just made, that Commissioner Gaziano just made, do I need to alter the ultimate --

ACTING STAFF DIRECTOR TOLHURST: Well, there is one important problem with it. And I don't disagree at all. Again, all I've done is create a timeline that meets the deadline. And if commissioners vote to tell me to extend anything, we will do that. And we will miss the deadline.
CHAIRPERSON CASTRO: We don't want to do that.

ACTING STAFF DIRECTOR TOLHURST: Either way staff will do that. The problem, Mr. Gaziano -- and I really tried to give everyone but staff as much time as possible at every step -- is that if we gave you another draft and then you had edits, it would have to go re-editorial review and --

COMMISSIONER GAZIANO: Yes. And let me --

ACTING STAFF DIRECTOR TOLHURST: -- redo legal sufficiency review. And then that would add another --

COMMISSIONER GAZIANO: I don't think you would need agency.

ACTING STAFF DIRECTOR TOLHURST: But we would have to redo editorial. Any changes beyond little nits and citations has to under our AI re-undergo editorial review and legal sufficiency review. That is why --

COMMISSIONER GAZIANO: That may be. So you do those at the end. I'm not suggesting anything that moves our approval date to changes given -- and so I think that meets the Chairman's concerns that this be done.

I'm not actually suggesting any adjustment
from August 12 on. Those are things we previously agreed to. What I'm suggesting is sometime in early June the staff is going to give the agencies a copy of this. Why don't we see it at the same time?

CHAIRPERSON CASTRO: And you said because ultimately changes --

PARTICIPANT: You can see it.

CHAIRPERSON CASTRO: -- we make will cause that additional work and additional delay.

ACTING STAFF DIRECTOR TOLHURST: Correct. I don't mind at all sharing it with you all, but if you have substantive edits, I will have to put it through all the --

COMMISSIONER GAZIANO: Let me see if I understand.

CHAIRPERSON CASTRO: Yes?

COMMISSIONER GAZIANO: The legal sufficiency or whatever review doesn't need to be done until --

ACTING STAFF DIRECTOR TOLHURST: It needs to be done because we don't give commissioners a final draft that isn't legally correct.

COMMISSIONER GAZIANO: No, no. We can call it the second draft, then. you don't need to do the sufficiency review until you otherwise would have
done the sufficiency review. The only difference is commissioners get -- you know, what I asked for at the last meeting and I think you all will want is a meaningful opportunity to express your views on this report.

If it's good enough for the Department of Justice and the Department of Education to see, I think it should be good enough for commissioners to see.

ACTING STAFF DIRECTOR TOLHURST: But I won't give it to the Department of Justice unless I've been told it's legally sufficient. So I can't. I won't do that review later. And AI doesn't allow me to do that review later. It has to be legally sufficient before I'll show it to DOJ to avoid embarrassing the agency. That's why I didn't do those reviews later.

CHAIRPERSON CASTRO: It sounds to me like an affected agency copy cannot be a second draft because of the fact that --

COMMISSIONER GAZIANO: Well, it's not going to be the final draft. The final draft, it's going to be given to them what? Give me an estimate. Somewhere around June 1? June 10?

ACTING STAFF DIRECTOR TOLHURST: No, no.
I honestly can't remember. It may be July 1st.

COMMISSIONER GAZIANO: Okay. That's what

I --

ACTING STAFF DIRECTOR TOLHURST: It's not

--

COMMISSIONER GAZIANO: Okay.

ACTING STAFF DIRECTOR TOLHURST: They're

going --

COMMISSIONER GAZIANO: Sometime around

July.

ACTING STAFF DIRECTOR TOLHURST: Whatever

is the minimum. They're getting either two weeks or

three weeks. I can't remember. But they're getting

the minimum time after it's been initially reviewed

and undergone legal sufficiency review.

COMMISSIONER GAZIANO: So the agencies,

the affected agencies, we're supposed to review they

can comment and change this final report, but we

cannot because --

ACTING STAFF DIRECTOR TOLHURST: Because

the AI requires it. I don't --

COMMISSIONER GAZIANO: Well, then it can

--

ACTING STAFF DIRECTOR TOLHURST: I don't

see the --
COMMISSIONER GAZIANO: Then legal sufficiency review would be very minimal, even if it has to be repeated. I'm not questioning whether it does or not. I'm not sure it does or not. But if you've done it once, then you know the changes the commissioners are making.

It would seem to me very minimal to redo the -- but it makes no sense to me that DOJ and Department of Education will see a draft for a month or so before we -- they can affect it. What they say will affect the final draft. But nothing the commissioners can say will.

ACTING STAFF DIRECTOR TOLHURST: That's not the case. What you say on your commissioner comments will directly affect --

COMMISSIONER GAZIANO: But between May 31st, you are going to receive seven or eight sets of commissioner comments.

ACTING STAFF DIRECTOR TOLHURST: Correct.

COMMISSIONER GAZIANO: You are going to make changes. The agency will see those changes. Commissioners will not.

ACTING STAFF DIRECTOR TOLHURST: You will see them --

COMMISSIONER GAZIANO: I won't know
whether Commissioner Achtenberg has convinced you to
do something or Gail and I have convinced you or staff
to do some enormous change. The agency will see that
change. And they can then comment on that change.

Under the current schedule, we will not.

ACTING STAFF DIRECTOR TOLHURST: This is
actually not departing from the previous practice.
And you will see it for the final draft and can vote
against it.

COMMISSIONER GAZIANO: Yes. We will only
have the --

ACTING STAFF DIRECTOR TOLHURST: I haven't
departed --

COMMISSIONER GAZIANO: We will only --

ACTING STAFF DIRECTOR TOLHURST: I haven't
taken out a commissioner review at that stage. This
reflects what happened last year. What I took out was
above this. And, again, I'm not at all suggesting
this is ideal. This --

COMMISSIONER GAZIANO: What it takes out
is one opportunity for commissioners to -- the draft
that you show the agency, that they can then effect,
it will be submitted to us on a take it or leave it
basis.

ACTING STAFF DIRECTOR TOLHURST: As it was
last year.

COMMISSIONER GAZIANO: Maybe it was. I just don't remember. But if that is so, then that doesn't sound like a very good plan.

CHAIRPERSON CASTRO: And, Madam General Counsel, Acting General Counsel, what can an agency really affect, though, in the review?

ACTING STAFF DIRECTOR TOLHURST: Nothing they say is mandatory. They make comments, and we reject or accept them. At least I can speak to what I have done with it when I have been the person putting in a review is I use it as a choice for them, a chance for them to help me not look like an idiot.

So if I have written "DOJ does this" and then do the X review and they can say, "Oh, can we call it the Y review? You look really silly" I'll change. You know, I'll use it as a check on have I said something wrong or is that not the way what you call it?

But they can't just write "We totally disagree with you. It's not our practice." If my research shows it's their practice, I'm going to ignore that comment.

CHAIRPERSON CASTRO: So, Commissioner, it sounds to me like they are not going to be making any
major substantive changes here. And, again, this is
certainly not the ideal schedule. I think we can all
agree to that. But we are under some time
constraints.

I hear what you are saying, but --

COMMISSIONER GAZIANO: Let me --

CHAIRPERSON CASTRO: -- I think we can
kind of --

COMMISSIONER GAZIANO: Let me refocus the
last sort of question. I suppose staff doesn't have
to ever take our commissioners' reviews into account,
but what is the harm in circulating it to us at the
same time it goes to the agency?

Maybe some of us have vacation between
July 29 and August 12.

ACTING STAFF DIRECTOR TOLHURST: Some of
us would have to cancel it to get --

COMMISSIONER GAZIANO: And I told you I
wished you hadn't done that. But, anyway, what is the
harm in circulating it to commissioners?

ACTING STAFF DIRECTOR TOLHURST: There's
not a harm except that it then gives you the
impression that I can accept changes from you, which I
can't if you want to meet the deadline because then I
would have to re-editorial and agency analysis --
COMMISSIONER HERIOT: Why don't we just circulate at that point and put in big letters on it "By the way, you're not going to be able to affect this"? Because I would like to see it at that point. It's not that there's no harm to it.

ACTING STAFF DIRECTOR TOLHURST: I don't have a problem with that, but I would leave that to the Commission to decide.

CHAIRPERSON CASTRO: That would require a motion is my understanding.

VICE CHAIR THERNSTROM: I really don't understand this. So I look at it that I've got things to say, but I've got this sign saying, "However you react, it really is unimportant. Well, you know, if it's not important, keep your thoughts to yourself," in effect.

COMMISSIONER HERIOT: It's not unimportant to your statement, unimportant to the body of the report.

COMMISSIONER GAZIANO: We had compressed time for commissioner statements as well. So, even if staff won't listen to us after May 31, it still will help us significantly to have it at the same time the agency -- I mean, I will be dumfounded if this Commission doesn't allow us to see the report at the
same time that it's sent to the agency.

COMMISSIONER HERIOT: Yes. You know, this report is going out to the agency. It seems silly that we don't get to see it.

ACTING STAFF DIRECTOR TOLHURST: That's been what happened the last four years.

COMMISSIONER HERIOT: Yes, but I've had like lots of drafts of these in the past.

COMMISSIONER GAZIANO: And we've had more time.

ACTING STAFF DIRECTOR TOLHURST: And we've had more time.

COMMISSIONER GAZIANO: Yes. Well --

COMMISSIONER HERIOT: We're not affecting your time except that --

ACTING STAFF DIRECTOR TOLHURST: You are affecting it, actually, because when I made the timeline, I scrunched staff's time --

COMMISSIONER HERIOT: No. It's an e-mail.

ACTING STAFF DIRECTOR TOLHURST: -- as the first priority.

COMMISSIONER HERIOT: It's just an e-mail.

CHAIRPERSON CASTRO: Okay. Let's get some order here. You know, we have talked about this, and we hear what you are saying. But absent --
COMMISSIONER GAZIANO: Okay. I --

COMMISSIONER HERIOT: So moved.

COMMISSIONER GAZIANO: I move that the Staff Director, Acting Staff Director, whoever is responsible, circulate a copy of the report that is sent to the affected agencies at the time it's sent to them for affected agency review.

CHAIRPERSON CASTRO: And, Commissioner Heriot, you have seconded that motion?

COMMISSIONER HERIOT: I moved it first.

CHAIRPERSON CASTRO: I'm sorry. You kind of --

COMMISSIONER HERIOT: I'm happy to call it --

CHAIRPERSON CASTRO: Okay. So I think we've had a sufficient amount of discussion on this. Unless hearing a request for that, I'll call a question on that. All those --

COMMISSIONER HERIOT: Just to clarify, all we're talking about is sending an e-mail.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote on the motion?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote on the motion?
COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote on the motion?

COMMISSIONER KIRSANOW: Aye.

CHAIRPERSON CASTRO: Vice Chair Thernstrom, how do you vote on the motion

VICE CHAIR THERNSTROM: At the moment I'm taking a pass. I can't get this out.

CHAIRPERSON CASTRO: Okay. Abstention.

Commissioner Titus, how do you vote?

COMMISSIONER TITUS: I will abstain, too.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: So you're voting in favor of the motion?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Okay.

ACTING STAFF DIRECTOR TOLHURST: Did you vote?

CHAIRPERSON CASTRO: I didn't vote. I am going to vote against the motion. So where are we? What has that turned out?

COMMISSIONER HERIOT: No change. Good.

COMMISSIONER GAZIANO: Unless the
abstainer -- it won't matter.

COMMISSIONER HERIOT: Yes.

COMMISSIONER GAZIANO: But those who abstained can express --

CHAIRPERSON CASTRO: So we have -- what was it?

ACTING STAFF DIRECTOR TOLHURST: Three yeses.

CHAIRPERSON CASTRO: Three yeses?

COMMISSIONER HERIOT: Four yeses?

CHAIRPERSON CASTRO: Four yeses?

COMMISSIONER GAZIANO: Abstentions.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER HERIOT: Four yeses.

COMMISSIONER GAZIANO: Four yeses, two abstentions.

COMMISSIONER TITUS: Mr. Chairman?

CHAIRPERSON CASTRO: Yes, Commissioner Titus?

COMMISSIONER TITUS: I'm okay with distributing it, but I want to make it very clear that this does not open up the process and that any kind of comments that are going to be made will be saved until the final report. This just gives you longer time to read it, that we don't mess up with Kim's schedule or
have to go back through the legal review or the editorial review or back to the agencies.

It is kind of like the Vice Chair said. That is kind of ridiculous, but if you want it but can't comment on it, I support that. But I want to be sure that that is understood in that motion that just passed.

VICE CHAIR THERNSTROM: Okay. And that's exactly where I am as well.

CHAIRPERSON CASTRO: Is that your understanding?

COMMISSIONER GAZIANO: The only motion was that it be circulated. I'm going to try and persuade all of you if I see blatantly wrong in it, that I'm going to provide comments. And it sounds like it will be ignored. And that is a process you all are going to --

CHAIRPERSON CASTRO: Well, in that case --

COMMISSIONER ACHTENBERG: Let me just say that my vote in the affirmative was predicated on the notion that this was advisory only and that --

COMMISSIONER HERIOT: I agree with you. And the only -- you know, I think all --

CHAIRPERSON CASTRO: Excuse me. One at a time. One at a time.
COMMISSIONER HERIOT: -- Todd is saying is 
that he might have a motion later to reverse that.

COMMISSIONER ACHTENBERG: Sure.

CHAIRPERSON CASTRO: Commissioner Achtenberg?

COMMISSIONER HERIOT: You have to make it 
as a motion.

CHAIRPERSON CASTRO: Can you repeat what 
you said?

COMMISSIONER ACHTENBERG: I said my vote 
in the affirmative was predicated on the statement 
that this was only advisory, meaning that we would be 
given the report at the same time the agency would be 
given the report, but that revises in no way either 
the rest of the schedule or gives us an opportunity to 
comment that isn't otherwise provided for in the 
schedule.

CHAIRPERSON CASTRO: And it sounds like 
that was not contemplated by this motion.

COMMISSIONER TITUS: Yes, it does, though.

COMMISSIONER HERIOT: No, no.

CHAIRPERSON CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: My understanding of 
the motion is the same as Commissioner Achtenberg's 
that we have not changed the schedule in any other
I believe all Commissioner Gaziano was saying is that that motion doesn't prevent him from bringing up the issue as he sees it at some later date, but the motion that we voted on did not change the schedule in any way, does not give commissioners the right for input that must be recognized. It simply gives us -- it sends an e-mail to us. We all get a copy earlier.

COMMISSIONER TITUS: Mr. Chairman?

CHAIRPERSON CASTRO: Yes, Commissioner Titus?

COMMISSIONER TITUS: Thank you.

Although I also want to be sure that it doesn't open up the door for people who disagree with it to begin to start to harass the staff to change it after they have put all of this work in it and now they're having to work on the next phase because that will slow the process down and if you are going to be making your arguments to convince -- because you have said two or three times, Commissioner, that you worry that Roberta might convince staff to take something out or you might convince staff to take something out. If that is going to be the way it plays out where we're going to start trying to convince staff to
change it, then I think that, in effect, throws the whole schedule off.

CHAIRPERSON CASTRO: Commissioner Achtenberg? Then Vice Chair Thernstrom.

COMMISSIONER ACHTENBERG: Mr. Chairman, it seems to me that maybe I should move to reopen the vote since there seems to be a lack of clarity.

CHAIRPERSON CASTRO: Is there a second on that motion?

VICE CHAIR THERNSTROM: I second it.

CHAIRPERSON CASTRO: All those in favor of reopening the vote signify by saying aye.

(Whereupon, there was a chorus of "Ayes.")

CHAIRPERSON CASTRO: Anyone opposed to that?

COMMISSIONER HERIOT: I agree with you on your interpretation.

CHAIRPERSON CASTRO: Vote --

COMMISSIONER GAZIANO: I was going to explain on the interpretation.

CHAIRPERSON CASTRO: We have a motion pending. What is your vote on that?

COMMISSIONER GAZIANO: I actually always approve such motions, unlike others in the majority who believe in taking things off, not allowing
discussions on the agenda.

CHAIRPERSON CASTRO: So you're voting in favor of the motion?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: How do you vote, Commissioner Heriot, on the motion to reopen the vote?

COMMISSIONER GAZIANO: Let's just -- we can do --

CHAIRPERSON CASTRO: I asked for voice. So why don't you do it again? All those in favor say aye.

(Whereupon, there was a chorus of "Ayes.")

CHAIRPERSON CASTRO: Any opposed?

COMMISSIONER HERIOT: Nay.

CHAIRPERSON CASTRO: Any abstentions?

COMMISSIONER HERIOT: I just think --

CHAIRPERSON CASTRO: You're opposed?

Commissioner Heriot is opposed. Any abstentions?

CHAIRPERSON CASTRO: Commissioner Kirsanow, how did you vote? I didn't hear you. I'm sorry.

COMMISSIONER KIRSANOW: Aye.

CHAIRPERSON CASTRO: Okay. The motion to reconsider the vote passes.

Yes, Vice Chair?
VICE CHAIR THERNSTROM: Now, it is my understanding from Commissioner Gaziano and Commissioner Heriot that all they want is an opportunity to look at this in order, solely in order, to be able to think about their statements after the final vote on this report.

If there is any other reason for having this earlier than contemplated look at the report, then, you know, the whole picture is changed.

COMMISSIONER GAZIANO: Mr. Chair?

CHAIRPERSON CASTRO: Yes, Commissioner Gaziano?

COMMISSIONER GAZIANO: I think Commissioner Heriot got the nature of my motion and purpose exactly right. Regardless of anything else, it will help all of us in preparing our statements as we have agreed to a shorter statement to see it earlier.

It also makes no sense to me that our staff will keep a report that they are sending an agency secret from commissioners. So that is valuable in and of itself.

My other point was that -- and this may be just too nerdly a point -- no parliament can ever bind a future parliament from considering new motions. And
if what we see at some point between now and when we receive that or if at some time after that I have the motion, I am going to share it with you all. I am not going to use it to harass staff. I am not going to -- I will draw it to your all's attention. And we ought to not try to bind ourselves when we know we can't bind ourselves. You can always vote it down later.

And maybe I won't make such a motion. Maybe it will be such a perfect draft, but the purpose of our providing comments, initial comments, to the staff is that the staff will take them into account. And that's the efficient way, rather than us sharing it amongst each other.

And so this next draft that the agency gets may be different in some ways that we will want to incorporate in our statements or we will want to share with each other.

CHAIRPERSON CASTRO: Okay. Well, let's call the question.

Those in favor of the motion to get the report earlier, please say aye. I tell you what. I'll do an individual -- oh, I'm sorry. Vice Chair, how do you vote on the motion?

VICE CHAIR THERNSTROM: I'm changing it to a no.
CHAIRPERSON CASTRO: Okay. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: I vote no. Commissioner Titus, how do you vote?

COMMISSIONER TITUS: I'll vote no.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

CHAIRPERSON CASTRO: In the opinion of the Chair, the motion fails.

COMMISSIONER HERIOT: You forgot Commissioner Kirsanow.

CHAIRPERSON CASTRO: Oh, I'm sorry. Commissioner Kirsanow, I apologize.

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Was that a yes?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Oh, it was a no?

Okay.

COMMISSIONER KIRSANOW: I vote for the motion.
CHAIRPERSON CASTRO: Okay. That's a yes, then?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: It was hard to tell based on the --

COMMISSIONER GAZIANO: Just to clarify, it is the meaning of the vote just taken that commissioners will see nothing between May 20, the draft that we are supposed to initially comment on, and July 29.

And then we will be delivered something on July 29 that affects changes each of us have sent in and the agency and anything else staff may want to do. And we'll have an up or down vote on it?

We'll be given a copy on July -- so no other commissioner will see draft, neither the Chairman nor any other commissioner, between then?

CHAIRPERSON CASTRO: Well, was there another -- Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: If I take the Acting Director at her word that this is the process that is consistent with prior processes and that there is not a deviation and whatever practice pertained, I am assuming will continue to pertain. So that is the basis for my vote to ratify the process.
CHAIRPERSON CASTRO: Commissioner Titus, did you have something?

COMMISSIONER TITUS: I was going to say the same thing, that to clarify, that this is the process that has been used at least the last four times. And so why it is suddenly a problem I don't really understand.

Also, we have had to compress the calendar. And we do get the final draft on the 29th. We have 13 or so days or however many days in July to review it before we take a vote. And then you have time, another month or so, after that to send in rebuttals. So there is time to review it before you vote and time to rebut it if we disagree with it.

So, in keeping with the precedent established when our colleagues were in the majority, as they like to point out often, I don't understand, really, why it is such a serious problem now.

COMMISSIONER GAZIANO: I absolutely --

CHAIRPERSON CASTRO: For the record, you know, we are still, the Democrats are still, the minority on this Commission.

COMMISSIONER GAZIANO: I didn't get an answer to my question, though.

By the way, I flatly disagree this is the
process.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER GAZIANO: This absolutely cuts out an opportunity for commissioners to provide comments on what was called the final. I absolutely disagree.

CHAIRPERSON CASTRO: Commissioner Gaziano --

COMMISSIONER GAZIANO: But my question is --

CHAIRPERSON CASTRO: -- it has gone on --

COMMISSIONER GAZIANO: But my question is --

CHAIRPERSON CASTRO: Ask one more question because we have kind of debated this motion already --

COMMISSIONER GAZIANO: Yes. I just want to --

CHAIRPERSON CASTRO: -- more than enough.

COMMISSIONER GAZIANO: So it is the majority who voted down the last motion's understanding that no commissioner at all will be allowed to see a copy of the report between May 20 and August 29th.

Some commissioners won't be able to see it. Some won't. I'm sorry. Between May 20 and July
29, no commissioner will be allowed to see a second
draft of this report. There won't be some who are
privileged and others who are not.

CHAIRPERSON CASTRO: I don't expect that
to be the case.

VICE CHAIR THERNSTROM: I don't even
understand the question. It's insulting.

CHAIRPERSON CASTRO: Yes. Let's move on.
I think we have debated that motion. It's been voted
on. It's failed.

ACTING STAFF DIRECTOR TOLHURST: I do want
to say, I mean, to be fair, this is condensed. I have
cut things. I don't have the AI in front of me. I
don't believe I cut another review in between there
and there. I had to cut things. Again, we have half
the time.

And I'll go back and check and send out an
e-mail if I have done something radically inconsistent
here in between editorial and final.

But my intent was to honor the spirit of
the AI in half the time. And that is the timeline
that I distributed.

CHAIRPERSON CASTRO: We understand you are
under a lot of strain given the time and --

ACTING STAFF DIRECTOR TOLHURST: I don't
want to pretend I have done the exact AI. I do admit I cut things.

CHAIRPERSON CASTRO: I understand.

ACTING STAFF DIRECTOR TOLHURST: I think this reflects how the order went after that.

CHAIRPERSON CASTRO: Yes. And to the point of this compressed timeline, I know, you know, we have identified that we need to -- I know there is a motion that is going to be contemplated on making an adjustment to the period of time during which comments are accepted by the public, so, again, with the efforts to try to get this report to Congress on time.

Commissioner Achtenberg, do you --

COMMISSIONER ACHTENBERG: Yes. Consistent with that, Mr. Chairman, I do want to move that the time frame for submission by the public or to the record be shortened so that we can comply with the aggressive timeline.

And typically we have a 30-day period, but I am going to move that we shorten that time frame by 14 days so that public submissions would be due Friday, May 27th and by virtue of the AI that governs the amount of time the briefing record remains open. It says that the briefing record will be kept open for a period of 30 days after the briefing or at otherwise
established by a majority vote of the commissioners.

I recognize that this is not ideal, but given the aggressive time frame and particularly if we let people know now that the record is even open as we speak, it's -- is it not?

ACTING STAFF DIRECTOR TOLHURST: To offer that, we could pull something on the web saying, "We're having this briefing. Public comments will be welcome" and put the public on notice of the issue. If we're not closed Monday, we could do that Monday.

COMMISSIONER ACHTENBERG: Sure but for a certain time frame so that the rest of the things might proceed.

CHAIRPERSON CASTRO: And the time frame is from 30 days to --

COMMISSIONER ACHTENBERG: It's --

CHAIRPERSON CASTRO: To 15 days?

COMMISSIONER ACHTENBERG: From 30 days to 15 days.

CHAIRPERSON CASTRO: Is there a second on that motion? Then I'll go to Commissioner Heriot.

COMMISSIONER TITUS: Second.

CHAIRPERSON CASTRO: Commissioner Titus seconds.

Commissioner Heriot?
COMMISSIONER HERIOT: I just wanted to say something in my capacity as Commission civil and that is as to both the previous motion and this motion, be careful what you wish for.

The early drafts of these reports tend to have lots of errors in them and very serious errors. When we cut off the ability of commissioners to spot those errors, that just means that errors are going to end up in the statements of dissenting commissioners. And that is not in your interest.

CHAIRPERSON CASTRO: Thank you, Commissioner Heriot.

Any discussion on the motion currently on the floor? Commissioner Gaziano?

COMMISSIONER GAZIANO: I thought Commissioner Titus was recognized.

CHAIRPERSON CASTRO: Oh, I'm sorry. No. I recognized her to make a second, second the motion.

COMMISSIONER GAZIANO: Oh, I'm sorry. I don't see why the public's comment period should be reduced. You know, the tight schedule is a problem of the Commission's making. And it doesn't matter that I opposed it. I don't see why that burden should fall on the public.

Given that even under the reduced period
of time they will not be incorporated in the version that commissioners receive, why not give them the full 30 days? Given that the only people who will be able to incorporate these in the report are the staff, now that there's this more than two-month period where commissioners won't be able to see the report, why not allow the public the full time?

ACTING STAFF DIRECTOR TOLHURST: I have a --

CHAIRPERSON CASTRO: Madam General Counsel, Acting Staff Director?

ACTING STAFF DIRECTOR TOLHURST: So the briefing is on the 13th. And I think shortening it down 15 days would be ridiculous. So I wouldn't suggest that. But to the extent that we get comments before the briefing, the day of the briefing, or within those first six days, they actually will be incorporated into the first draft.

COMMISSIONER GAZIANO: Sure. Some might.

I mean --

ACTING STAFF DIRECTOR TOLHURST: I will also note that in past statutory reports, again, public comments were rarely, if ever, cited in the main report, but they were often cited in commissioner statements that opposed.
CHAIRPERSON CASTRO: Any other discussion on the motion? Hearing none -- I'm sorry. Commissioner Heriot?

COMMISSIONER HERIOT: That last sentence there that they're often involved in --

ACTING STAFF DIRECTOR TOLHURST: They are available to the --

COMMISSIONER HERIOT: That makes sense to keep it open because the statements will not have been started by then. If they're unlikely to be incorporated into the main report anyway, what is the harm in allowing the public statements to be filed somewhat later?

ACTING STAFF DIRECTOR TOLHURST: I would like to have as many statements as possible before my first draft. So with the shortened time period, I think it would encourage the public to submit them in times --

COMMISSIONER HERIOT: It seems more likely that this means they don't get timely notice.

ACTING STAFF DIRECTOR TOLHURST: That's up to you all. My sense is that this issue is already getting a lot of attention. We're probably going to get a lot of attention and that we are probably going to get a lot of comments.
COMMISSIONER GAZIANO: Most people work to a deadline. So if the deadline, as proposed, is 15 days, they're going to give them to after the report has been circulated to commissioners. So if that's the case, why not give them an extra 15 days?

COMMISSIONER HERIOT: It's also certain groups have geared up to comment on this. You shorten the period, and you get comments from people who have already geared up to comment but not so much from people who are inspired to comment as a result of the briefing. So I would think we definitely want to keep this open.

CHAIRPERSON CASTRO: Any other discussion on this motion?

(No response.)

CHAIRPERSON CASTRO: Hearing none, we will call the question in support of the motion to reduce the time for public comment from 30 days to 15.

Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: I vote yes.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I vote no.

CHAIRPERSON CASTRO: Commissioner Gaziano, now do you vote?
COMMISSIONER GAZIANO: No.

CHAIRPERSON CASTRO: I vote yes.

Commissioner Titus, how do you vote?

COMMISSIONER TITUS: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRPERSON CASTRO: In the opinion of the Chair, the motion passes.

V. STATE ADVISORY COMMITTEE ISSUES

CHAIRPERSON CASTRO: The next item on our agenda is the State Advisory Committee issues. We are going to be looking at the re-charter of the Alabama SAC, the re-charter of the Illinois SAC, and the re-charter of the Minnesota SAC.

- RE-CHARTERING THE ALABAMA SAC

CHAIRPERSON CASTRO: First up, we have the Alabama State Advisory Committee. I am going to make our standard motion, but I am also going to make a motion to bifurcate one of the members from consideration from the overall. And we may want to go into executive session to discuss that. But, just as
I make this motion, I want you to understand that I am done with the bifurcation.

So the first motion is that I move that the Commission re-charter the Alabama State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based upon the recommendation of our Staff Director, Acting Staff Director: -- I liked her as Staff Director as well -- I'll just say Staff Director -- Valerie Askew, David T. Beito, Lula Bridges, Margaret Brown, Richard H. Finley, Leida Javier-Ferrell, Randy B. Kelley, Shana -- actually, are we going to bifurcate that? I've got to do it all at once? Shana J. Kluck, Raphael A. Maharaj, Kevin C. Newsom, Maurice L. Shevin, L'Tryce M. Slade, Edward Still.

Pursuant to this motion, the Commission appoints David Beito as Chair of this re-chartered Alabama 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 appointment.

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRPERSON CASTRO: I will also make a
companion motion to sever the consideration of Shana Kluck from the rest of the package, as we have done for other individuals in the past. Do I have a second on that motion?

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Okay. Shall we go into executive session here?

COMMISSIONER GAZIANO: Can I --

CHAIRPERSON CASTRO: Sure.

COMMISSIONER GAZIANO: -- try and make a motion? Because it may obviate the need to go into executive session.

CHAIRPERSON CASTRO: Yes?

COMMISSIONER GAZIANO: I have some serious questions about the way this SAC was organized. I would be -- I don't know whether for -- let me just mention one of them.

When Commissioner Titus wanted to postpone -- I have some issues with some of the other SACs as well -- you know, I took it as good faith that she had some issue she wanted to work out.

But since then Professor Seth Norton, who was on the previous package, has been cut from this package -- oh, I'm sorry -- Professor Jim Couch. Oh, I'm sorry. I'm in the wrong state. Now to Alabama.
Professor Jim Couch was struck from the package without any reason. I think that anyone who is well-qualified, as Professor Couch is, and who expresses an interest and goes through the process and applies should not be struck arbitrarily. For whatever reason I don't know, but with regard to some of the other SACs, I have some serious questions about the ideological balance.

Our AI, which binds the staff, which binds the staff in how they are to propose these, requires in three regards that they seek an ideological bounds. That's an immortal problem with the other two state SACs.

But at this point, I wondered whether our staff could say why Professor Couch was cut from this SAC.

CHAIRPERSON CASTRO: Can it be done in open? I don't know the reason either.

ACTING STAFF DIRECTOR TOLHURST: Sure. This reason bears no reflection on him. So the initial SAC was created or the SAC proposal package was created under Staff Director Dannenfelser. And Commissioner Titus had voiced concerns both about an individual member and about balance generally.

And so we went back to the Regional
Director, said that there were concerns about balance generally. And her solution in doing that was to cut Mr. Couch because when she looked at the new members, of the new members who were on the conservative side, that there was a lesser sort of civil rights background with some of the other conservatives, whom she chose not to cut.

So I believe he was cut strictly for balance reasons to create a panel that was --

COMMISSIONER HERIOT: This is ideological balance you're talking about?

ACTING STAFF DIRECTOR TOLHURST: I'm sorry. Yes.

COMMISSIONER GAZIANO: Why can't our staff -- by the way, I disagree with that determination that this is the only SAC that is remotely balanced of the three that --

COMMISSIONER HERIOT: Yes. This one is the one that was unbalanced is real trouble.

COMMISSIONER GAZIANO: We're being asked to vote. But assuming, assuming, there was some real issue with balance other than stacking the deck for every state in violation of our AI, why couldn't the staff have added members of a different ideological persuasion?
To ask someone to go through the process, to have them on a slate, to announce that they were on a slate, to have them ready to vote, and then to tell -- it's hard to get -- this is unpaid, as you know.

CHAIRPERSON CASTRO: Yes. Commissioner Gaziano, I just want to make clear there is no effort to stack anything here. In fact, my understanding is that the composition of these or at least of this SAC, in particular, was reviewed by our prior person acting as Staff Director and our current career officer acting as Staff Director. So this is not something that, as far as I can tell based on that, is political stacking efforts.

ACTING STAFF DIRECTOR TOLHURST: The individual who is the Regional Director for this state who said that, in her experience, she had trouble with larger SACs after looking for other members concluded that with the people involved, keeping the SAC smaller as a team was a better choice.

And then upon Mr. Byrnes' reviewing it, Mr. Byrnes, having a great deal of experience, not only having worked in OSD much longer than myself but having been the head of the regionals, reviewed this for me. And his belief was -- he is right here. He can correct me if I am wrong, but under the current
slate, there were four Republicans, five Democrats, and four independents with three of them leaning Republican.

So he, in fact -- and I believe we took him at his word that this remained a balanced SAC, whether or not Ms. Kluck remains. And I feel very comfortable validating that review to him. I looked at what he had done and think he did his own balance.

CHAIRPERSON CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: Our AIs require that these be between 11 and 17. I don't know if the statute --

ACTING STAFF DIRECTOR TOLHURST: Nineteen.

COMMISSIONER GAZIANO: I'm sorry. Nineteen. Is that what the statute requires as well?

MR. BYRNES: It could be in our --

COMMISSIONER GAZIANO: Okay. We think it may be not just an instruction but in some ways binding legally, at least until we change the CFR.

ACTING STAFF DIRECTOR TOLHURST: And 13 is within that.

COMMISSIONER GAZIANO: Yes, 13 is within it. As I understand, the motion to sever might involve cutting one more. So we're scraping the bottom of the lawful limit.
The idea that we need to disinvite someone willing to serve because they're conservative is -- and, as I said, this does seem like a balanced package to me. The others are the ones that don't.

But if staff on the suggestion of one commissioner -- and that's the way this transpired. The staff decided that they needed to cut someone just because they needed to cut one more conservative, that is troubling.

If we are going to vote on this today, I move that we add Professor Jim Couch to the Alabama SAC.

COMMISSIONER HERIOT: A friendly amendment. What if we were to do that plus add David Beito's suggestion, who I think was somebody who needs --

MR. BYRNES: Norman Baldwin.

COMMISSIONER HERIOT: Baldwin?

MR. BYRNES: Yes.

COMMISSIONER HERIOT: His first name?

MR. BYRNES: Norman.

COMMISSIONER HERIOT: Norman Baldwin. And that would add somebody leaning left and somebody leaning right.

CHAIRPERSON CASTRO: I wouldn't accept
that as a friendly amendment. I guess, you know, balance is in the eye of the beholder, I suppose, but, you I know, I feel comfortable based on what our Acting Staff Director and our prior Acting Staff Director and the Regional Director have said is balanced, but if you do have a motion on Mr. Couch, you can make that motion.

COMMISSIONER HERIOT: Do I make a motion with --

CHAIRPERSON CASTRO: I'm sorry. Vice Chair, I didn't your hand there. I apologize.

VICE CHAIR THERNSTROM: Yes. I don't know what this whole discussion is about. We have got an incredibly balanced SAC here with the political affiliation, as has already been spelled out. If anything, it's leaning slightly conservatively because two independents are, fact, Republican-leaning. I mean, I don't understand who is not voting this up or down or --

COMMISSIONER GAZIANO: I accept Commissioner Heriot's friendly amendment. I move, then, as amended, to add Professor Jim Couch and the left-leaning Norman Baldwin to the SAC --

COMMISSIONER HERIOT: Second.

COMMISSIONER GAZIANO: -- to keep the
ideological balance such as it is.

CHAIRPERSON CASTRO: Okay. So let's take these motions separately. Now, getting back to the motion that severed Ms. Kluck, do we need to go into executive session? Do folks want to discuss that? If so, we will need to go into executive session. That way we could then vote on each of these motions.

COMMISSIONER ACHTENBERG: May I make a motion that we have to vote on the motion to sever Ms. Kluck?

CHAIRPERSON CASTRO: We did vote on the motion to sever.

COMMISSIONER ACHTENBERG: Yes. I did --

CHAIRPERSON CASTRO: So it's out there. We have three motions. We have the main motion.

COMMISSIONER GAZIANO: I thought we approved the motion to sever. We just haven't dealt --

CHAIRPERSON CASTRO: We haven't voted on the motion to sever. We have severed. So what I'm saying, before we vote on the motion to sever, do we want to go into executive session to discuss that motion?

COMMISSIONER GAZIANO: That's fine.

CHAIRPERSON CASTRO: Okay.
COMMISSIONER GAZIANO: Do we really need to go into executive session?

CHAIRPERSON CASTRO: I have been counseled by --

ACTING STAFF DIRECTOR TOLHURST: Well, it depends what you're wanting to talk about.

CHAIRPERSON CASTRO: I think we probably do need to go into executive session.

ACTING STAFF DIRECTOR TOLHURST: If you want to talk about her affiliations in any depth, I would err on the side of protecting her privacy. It just depends on what discussion you intend to have.

COMMISSIONER GAZIANO: From what I'm assuming will transpire, I don't think that is something that is necessary to go into executive session. And maybe if it turns in that direction, we can go there, but I would like to keep it on the public record.

CHAIRPERSON CASTRO: Why don't we do this? Well, I think it needs to go into executive session. So if you'd like, we can vote on the main motion, which has already severed Ms. Kluck. We can then vote on your motion and then go into executive session to discuss the Kluck motion. So we'll do that.

So on the first motion, which was to
COMMISSIONER GAZIANO: I might vote for the whole package. I might vote. Depending on how these others are, I might vote on the whole package.

Why don't we --

CHAIRPERSON CASTRO: Which is what I was intending to do --

COMMISSIONER GAZIANO: Whichever order --

CHAIRPERSON CASTRO: -- kind of all at once. So why don't we --

COMMISSIONER GAZIANO: Yes. Whichever order you want to --

CHAIRPERSON CASTRO: -- go into executive session?

COMMISSIONER GAZIANO: -- do it in.

CHAIRPERSON CASTRO: Let's go into executive session, then, and have that discussion so that you can be fully informed when you make your vote on all the motions.

COMMISSIONER GAZIANO: Let's vote on the motions. Go ahead.

ACTING STAFF DIRECTOR TOLHURST: I hereby certify that this meeting can be closed and the information pertaining to the same be withheld pursuant to exemption under 45 CFR 702.53, exemption
6, when a meeting is likely to disclose information of a personal nature or disclosure would constitute an unwarranted invasion of personal privacy.

CHAIRPERSON CASTRO: Okay. All of those in favor of the motion to go into closed session signify by saying aye.

(Whereupon, there was a chorus of "Ayes."

CHAIRPERSON CASTRO: Those opposed?

(Whereupon, there was a chorus of "Nays."

COMMISSIONER HERIOT: I don't quite understand how there is something of a personal nature here.

CHAIRPERSON CASTRO: And any abstentions?

(No response.)

CHAIRPERSON CASTRO: Okay. So the objections, the noes, are Commissioners Heriot, Gaziano, and Kirsanow.

(Whereupon, the foregoing matter went off the record at 11:35 a.m. and was reconvened in executive session. The open session was reconvened at 12:03 p.m., as follows.)

CHAIRPERSON CASTRO: We're back in public session. There was a motion made during closed session to strike Ms. Kluck from the SAC consideration. It was a motion made by Commissioner
Achtenberg and seconded by Commissioner Titus. We have discussed it. And we will now call the question.

I will do it by roll. Madam Vice Chair, how do you vote on the motion?

VICE CHAIR THERNSTROM: Hold on a minute.

I'm thinking.

CHAIRPERSON CASTRO: Okay. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I vote no.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Titus, how do you vote?

COMMISSIONER TITUS: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Emphatically no.

CHAIRPERSON CASTRO: Madam Vice Chair, how do you vote?

THE REPORTER: Could Commissioner Kirsanow repeat his vote?
CHAIRPERSON CASTRO: Commissioner Kirsanow, would you repeat your vote for the purpose of the Court Reporter?

COMMISSIONER KIRSANOW: Emphatically no.

CHAIRPERSON CASTRO: Emphatically no.

PARTICIPANT: It's a no.

CHAIRPERSON CASTRO: Got it. Thank you.

COMMISSIONER GAZIANO: It's emphatically no. It's not just a no.

CHAIRPERSON CASTRO: That counts for two?

(Laughter.)

VICE CHAIR THERNSTROM: If I am voting yes, it's going to end up a yes, yes depending on me.

CHAIRPERSON CASTRO: Well, I don't want to put you under any pressure.

VICE CHAIR THERNSTROM: I am under pressure.

COMMISSIONER TITUS: The public is back.

CHAIRPERSON CASTRO: You're the public, Audrey.

(Laughter.)

ACTING STAFF DIRECTOR TOLHURST: You're just the only one that --

MS. WRIGHT: Excuse me.

VICE CHAIR THERNSTROM: Abstain.
CHAIRPERSON CASTRO: Madam Vice Chair abstains. And I will also abstain. The motion fails. The next motion we have we should probably address the motion. Actually, you know what? Can I change? I'm going to vote yes. It's still the same result, but I'm going to vote yes on the motion. Sorry.

The two motions that are still pending, one is the motion to add Professor Couch -- and who was the other?

COMMISSIONER GAZIANO: Norman Baldwin, who was also --

CHAIRPERSON CASTRO: Norman Baldwin?

COMMISSIONER GAZIANO: -- recommended by the Chair. As I understand it, he was -- is Norman Baldwin, sir, the renewal?

PARTICIPANT: No.

CHAIRPERSON CASTRO: And we had information on these two individuals in the materials? We had --

ACTING STAFF DIRECTOR TOLHURST: They're not in your current materials, but they're not on the slate Couch had been in the previous materials. I don't --

COMMISSIONER GAZIANO: As was Baldwin.
Yes. Baldwin --

CHAIRPERSON CASTRO: They were both in the prior materials?

COMMISSIONER GAZIANO: They were both in the prior materials.

CHAIRPERSON CASTRO: Okay. Do I have a question over here?

COMMISSIONER TITUS: I'm sorry.

CHAIRPERSON CASTRO: Okay. Commissioner Heriot?

COMMISSIONER HERIOT: Excuse me.

CHAIRPERSON CASTRO: You had your hand up?

COMMISSIONER HERIOT: Do I have my hand up? No. But I wanted to say something.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER HERIOT: And that is, you know, in the past, we have thought that striking somebody just already on the SAC without cause is bad practice. It creates an incentive for arbitrary exclusion.

So I think that in general, we are about to keep people who are already on the SAC on the SAC. That means Couch here and if there's a belief that that would -- you know, is not good from the standpoint of balancing ideology, then --
ACTING STAFF DIRECTOR TOLHURST: They worked on --

COMMISSIONER GAZIANO: They were proposed.

They had already been through the process.

ACTING STAFF DIRECTOR TOLHURST: They're on the slate. So people aren't going to be --

COMMISSIONER GAZIANO: Yes, but the same principle applies for people who have gone through --

COMMISSIONER HERIOT: You know, you are going to get arbitrary exclusions here. And I think that is a mistake.

CHAIRPERSON CASTRO: So we're discussing the motion to add these two other folks right now. Is there any other comment or discussion on these two individuals being added to the slate? Madam Vice Chair? And then Commissioner Achtenberg.

VICE CHAIR THERNSTROM: Go ahead. I've just got a question.

CHAIRPERSON CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: It appears that maybe I'm missing something, but what do we do? Do I have information on them?

CHAIRPERSON CASTRO: Well, that's what I asked about.
COMMISSIONER GAZIANO: You have circulated in the last --

COMMISSIONER ACHTENBERG: You had them in your last packet, yes.

COMMISSIONER GAZIANO: -- in the last packet.

COMMISSIONER HERIOT: On both of the exhibits.

COMMISSIONER GAZIANO: Was it --

COMMISSIONER ACHTENBERG: In January.

VICE CHAIR THERNSTROM: So the sole reason for eliminating somebody who had already been on the SAC was in order to maintain the balance. This is a very balanced SAC. And the sole reason for adding this other person is in case the balance is thrown.

COMMISSIONER GAZIANO: It's two people, one who is conservative and one who is liberal, --

VICE CHAIR THERNSTROM: Yes, right.

COMMISSIONER GAZIANO: -- because someone wants to keep the exact balance of the SAC. I am willing to propose to put both of them back on. My main reason, though, is that Professor Jim Couch agreed to serve, had been told that he was on the package, and then he was struck because they wanted to strike a conservative.
If we're going to do that, this motion would keep the ideological balance exactly as it is but would allow these gentleman who is willing to serve to serve.

CHAIRPERSON CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Commissioner Gaziano, then why was the other person not put forward?

COMMISSIONER GAZIANO: I don't know.

ACTING STAFF DIRECTOR TOLHURST: I don't know. We don't know. That's what she came back with --

CHAIRPERSON CASTRO: Okay.

COMMISSIONER ACHTENBERG: Do we typically -- I mean, isn't the -- I understand that we object to some people and we ratify the SAC composition, but don't we typically affirm most of the issues for forming the SAC handles to be addressed under the SAC?

COMMISSIONER HERIOT: But that would be in favor of the motion and the guy that was originally recommended by the staff. It was only because the Commission believed that it wasn't sufficiently balanced that we don't have them now. So now we're offering him with another legal solution to make
everybody happy.

The staff originally proposed the conservative on this in the package. And I believe it was Commissioner Titus. Commissioner Titus thought that it was not properly ideologically balanced. Is that right? Is it you who was concerned about that?

COMMISSIONER TITUS: But I didn't point out any individual.

COMMISSIONER HERIOT: Yes.

COMMISSIONER TITUS: I was looking at the overall picture, including Ms. Kluck.

COMMISSIONER HERIOT: He got dropped, even though he was in the original proposal from the staff.

So we're trying to make everybody happy. The staff would get the whole group that they proposed. Plus, Commissioner Titus' concern over balance would be dealt with by adding a liberal as well.

COMMISSIONER ACHTENBERG: So let me recap, if I might, --

CHAIRPERSON CASTRO: Sure.

COMMISSIONER ACHTENBERG: -- Mr. Chairman.

You're saying that the original group, as proposed by the staff, included both of these people you're trying to add now.

CHAIRPERSON CASTRO: Right.
COMMISSIONER ACHTENBERG: Then you're asserting that they were taken off because of Commissioner Titus' expressed concern.

COMMISSIONER HERIOT: Yes, they took off a liberal and a conservative and added a liberal. I don't understand either, but that's the way --

COMMISSIONER ACHTENBERG: And added a liberal. Who is the liberal they added?

COMMISSIONER GAZIANO: Added two liberals.

COMMISSIONER ACHTENBERG: Two liberals.

Okay.

COMMISSIONER GAZIANO: They added two liberals.

CHAIRPERSON CASTRO: It's my understanding that the male liberal was removed and substituted for a female liberal so that there could also be gender balance.

COMMISSIONER GAZIANO: And they added a male liberal as well.

COMMISSIONER TITUS: He was there. He was different from the original, but --

COMMISSIONER GAZIANO: Could I recognize my -- my special assistant says it was Edward Still.

COMMISSIONER HERIOT: Somebody I know very well.
COMMISSIONER GAZIANO: Leida Javier-Ferrell. And I have no objections to any of these additions. I think they're fine additions. I'm not sure they were necessary, but they're fine. But I disagree that the original package did not meet balance, especially as compared to some of the other SACs that we might vote on. And all I --

COMMISSIONER KIRSANOW: This is Kirsanow.

May I --

CHAIRPERSON CASTRO: Sure.

COMMISSIONER KIRSANOW: It's my understanding that Mr. Couch was removed and Ferrell was added for gender balance.

ACTING STAFF DIRECTOR TOLHURST: It was Baldwin removed.

COMMISSIONER KIRSANOW: Baldwin was removed for gender balance.

ACTING STAFF DIRECTOR TOLHURST: I don't even know that that's the case, but if Couch was only removed for political balance.

COMMISSIONER KIRSANOW: I would just note that we have an AI. And I can't recall the number, but --

ACTING STAFF DIRECTOR TOLHURST: I can, yes. It's 701. It's --
COMMISSIONER KIRSANOW: That precludes any kind of consideration, age, sex, religion, all the protected classes, in order to achieve the particular demographic balance.

ACTING STAFF DIRECTOR TOLHURST: This is the first I'm hearing that that was the reason. And, in fact, this is --

CHAIRPERSON CASTRO: Someone told me that. So I don't know.

ACTING STAFF DIRECTOR TOLHURST: -- remaining five women and eight men. So no one has tried to nor achieve gender balance from what I can see.

CHAIRPERSON CASTRO: Okay. Well, if there's no further -- oh, Commissioner Heriot, go ahead.

COMMISSIONER HERIOT: We do have AIs that say no person is to be denied an opportunity to sit on a State Advisory Committee because of race, age, sex, religion, national origin, or disability.

If we're removing people who are on the list and substituting someone because they have a different gender, I think we're violating that rule. I think we should put everybody back if we are concerned about ideology. Again, you know, the
pending motion won't affect ideological balance because we're talking about putting both a conservative and a liberal onto the list.

And we're playing with fire here where we take the list and manipulate it by taking people off and --

CHAIRPERSON CASTRO: Well, we're not --

COMMISSIONER HERIOT: I don't mind adding people but taking people off. It's dirty pool.

CHAIRPERSON CASTRO: Let me just clarify. We're not trying to manipulate this. The statement that I made was based on some information that I was provided. I don't have any knowledge as to specifically how this list was put together of people taking --

COMMISSIONER HERIOT: Well, that's --

CHAIRPERSON CASTRO: Let me just say --

COMMISSIONER HERIOT: That's worse than --

CHAIRPERSON CASTRO: I think that what we're being presented here -- well, it's not worse, but let me just finish. So clearly our effort here is not to do anything that would be in violation of our AI or of the law. And so I just want to make that clear.

COMMISSIONER HERIOT: That's not clear.
You just told me you didn't know why.

CHAIRPERSON CASTRO: I just told you it's clear but --

COMMISSIONER HERIOT: And you don't know why.

CHAIRPERSON CASTRO: I don't know why, correct.

COMMISSIONER HERIOT: So how can you say it's not for a --

CHAIRPERSON CASTRO: That I do not know why. I don't --

COMMISSIONER HERIOT: That's not good enough.

CHAIRPERSON CASTRO: Well, in any event, Commissioner Achtenberg?

COMMISSIONER HERIOT: Willful ignorance is not good enough.

CHAIRPERSON CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: I was going to vote for the motion out of courtesy and also because it seems to me that given that my concern was I don't want to do anything to erode the SAC's authority or that's not consistent with past practice and that kind of thing. So that was the nature of my concern.
I think to the extent that it is fair if
two are appointed and they are diverse opinions, that
is fine with me. But you almost talked me out of it.
So if we stop the discussion now, I'll vote with you.
If we continue, I may change my mind.

VICE CHAIR THERNSTROM: I feel exactly the
same way.

CHAIRPERSON CASTRO: Okay. Well, let's
vote on it now, then. And we'll do individual votes.
So, Madam Vice Chair, how would you vote?

VICE CHAIR THERNSTROM: Yes. Okay. I'll
cast a vote for it.

CHAIRPERSON CASTRO: Votes for the motion.
Commissioner Heriot, how do you vote

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano,
how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: I vote yes.
Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

VICE CHAIR THERNSTROM: Not emphatically?

CHAIRPERSON CASTRO: Not this time I
guess.

COMMISSIONER KIRSANOW: Lukewarm.
CHAIRPERSON CASTRO: Can I change mine to emphatically yes? Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: And Commissioner Titus?

COMMISSIONER TITUS: Yes.

CHAIRPERSON CASTRO: I believe the motion passes unanimously.

COMMISSIONER GAZIANO: Excellent.

CHAIRPERSON CASTRO: Okay. So now they are added to the list that we read earlier, as is Ms. Kluck. So our last motion on the Alabama SAC, then, is a motion to approve the slate that was read earlier. I'll just read the names again just to make sure we're clear: Valerie Askew, David Beito, Lula Bridges, Margaret Brown, Richard H. Finley, Leida Javier-Ferrell, Randy B. Kelley, Shana Kluck, Raphael Maharaj, Kevin Newsom, Maurice Shevin, L'Tryce Slade, Edward Still. What is Professor Couch's full name?

PARTICIPANT: Jim Couch.

CHAIRPERSON CASTRO: Jim Couch. And the other person was?

PARTICIPANT: Norman Baldwin.

CHAIRPERSON CASTRO: Norman Baldwin. So those are the individuals that would be on the SAC
based on the motion. So if there's no further
discussion on that, I'll call the question on that
motion. All those in favor of this signify by saying
aye.

(Whereupon, there was a chorus of "Ayes.")

CHAIRPERSON CASTRO: Any opposed?

(No response.)

CHAIRPERSON CASTRO: Any abstentions?

(No response.)

CHAIRPERSON CASTRO: Okay. It's
unanimous.

VICE CHAIR THERNSTROM: Mr. Chair, before
we move, I want --

CHAIRPERSON CASTRO: Madam Vice Chair?

VICE CHAIR THERNSTROM: -- to do another
-- let me just say something I meant to say before. I
trust, I assume, that it is far from the truth that,
as asserted by Commissioner Gaziano when we were
discussing Kluck that half of our SAC members have
been in legal trouble of one sort or another, I mean
--

COMMISSIONER GAZIANO: Or affiliated with
someone who has been in legal trouble or --

COMMISSIONER HERIOT: If they're lawyers,
it seems very likely that it's far more than half.
CHAIRPERSON CASTRO: Okay. We'll, let's move on to the next SAC. I'm sorry. It's 12:20.

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: And folks do have planes to catch. I know that.

- RE-CHARTERING THE ILLINOIS SAC

CHAIRPERSON CASTRO: So we'll move on next to the Illinois SAC, State Advisory Committee. I move that the Commission re-charter the Illinois State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based on the recommendations of our Staff Director: Barbara J. Abrajano, Nancy C. Andrade, Jonathan J. Bean, James F. Botana, Sunny P. Chico, H. Yvonne Coleman, Louis S. Goldstein, Sandra S. Jackson, Demetri C. Kantzavelos, B. Herbert Martin, Kamran A. Memon, Malik Nevels, Gordon M. Quinn, Cynthia C. Shawamreh, Ennedy D. Rivera, Anthony A. Sisneros, Betsy Shuman-Moore, Farhan Younus.

Pursuant to this motion, the Commission appoints Barbara J. Abrajano as Chair of this re-chartered Illinois 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 appointment.

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRPERSON CASTRO: Okay. Discussion?

Commissioner Gaziano?

COMMISSIONER GAZIANO: By my count, the slate was not put together in compliance with administrative instruction 5-9 in 2 respects. First of all, our particular AI requires that there only be at least one member of every party. Party balance is not a significant concern other than there be at least one of each.

What is in three places in the AI is that there is some ideological balance. Section 2.02 says, "Membership shall be established to promote vigorous debate and full exploration of the issues."

Section 2.04 says that "State Advisory Committee members shall be fairly balanced in terms of points of view represented and the functions to be performed." By that -- that's section 2 of AI 5-9. I thought I said that before.

By my count, there are 2 conservatives, 14 liberals, 4 of which I'm not sure it's very clear. One of the so-called Republicans seems quite to be a hard left individual. So this seems wildly
imbalanced. And so I would like to inquire about whether that kind of ideological balance was looking.

The second mistake -- and I'll just get it out and then maybe the Staff Director can -- is that of the seven people that I recommended, although I think commissioner recommendations should at least be considered, regional staff said that they contacted some, who claimed that they were never contacted.

Particularly Professor Seth Norton is one in particular, who was never contacted about whether he was willing -- no. Maybe an e-mail went out, and it wasn't followed up, but my staff was able to contact him. And he denied that he was ever reached by anyone on the staff. And maybe that's why this SAC is so wildly imbalanced in violation of the AI.

Do you know, for example, whether Professor Norton was ever contacted?

ACTING STAFF DIRECTOR TOLHURST: Well, first I would disagree it is wildly imbalanced, as did Mr. Byrnes, who confirmed for me that it was, in fact, balanced.

We did, in fact, follow up with David Beito, who is in charge of the region administering the SAC. He assured us --

COMMISSIONER GAZIANO: Beito I don't think
is the --

ACTING STAFF DIRECTOR TOLHURST: Sorry. Sorry. I was thinking about the last vote. He said that he contacted these people. You know, neither Chris nor I if you look at every SAC member would potentially have 950 people. We cannot individually call all of them. We have to rely on our regional staff, who are paid to do this job.

Seth said that he contacted them. Then because there were questions encouraged to follow up, he then produced e-mails demonstrating that he had contacted them. And you can speak further to that.

MR. BYRNES: We were able to substantiate with e-mails that he had contacted --

COMMISSIONER GAZIANO: Do you know about Seth Norton?

MR. BYRNES: Specifically? Yes.

COMMISSIONER GAZIANO: And Seth Norton said he wasn't interested.

MR. BYRNES: I don't believe there was a reply.

COMMISSIONER GAZIANO: Okay. So there was maybe an e-mail sent and no

MR. BYRNES: Beyond an e-mail being sent, I'm not sure what the --
COMMISSIONER GAZIANO: I suppose my deeper problem is sometimes there is shown how many Republicans or Democrats. I think it is a -- and I'm not necessarily blaming staff for the way they have done it in the past, but that factor being highlighted seems to be a mistake in what the AI actually requires.

To what extent was there an investigation of their ideological or other perspectives?

ACTING STAFF DIRECTOR TOLHURST: Chris can speak to it. We only have the paperwork we have.

MR. BYRNES: Right. We --

ACTING STAFF DIRECTOR TOLHURST: In this SAC, in particular, there were a lot of independents.

MR. BYRNES: Yes. And we don't just look at party affiliation. We examine the statement of demonstrated interest and experience in civil rights. We also look at the resumes to sort of get a full picture.

COMMISSIONER GAZIANO: Do you Google them?

ACTING STAFF DIRECTOR TOLHURST: Yes, we do.

CHAIRPERSON CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: Our AIs actually say that "a follow-up telephone call shall be made to
ensure receipt of the letter when we contact potential SAC members." Did that happen in this case?

MR. BYRNES: I can verify that. I'm not sure.

CHAIRPERSON CASTRO: Is there any other discussion? If there is any other discussion, let me know. Otherwise I'm going to call the question.

COMMISSIONER GAZIANO: I move to postpone a vote on this until it's ascertained whether the proper follow-up was made, --

COMMISSIONER HERIOT: Yes.

COMMISSIONER GAZIANO: -- on at least the people I recommended or my special assistant recommended be considered.

COMMISSIONER HERIOT: I would second that motion. I mean, the AIs are quite clear. It says that "A follow-up telephone call shall be made."

Mr. Byrnes has said that he doesn't know whether a follow-up call was made. And it seems appropriate in this case. You know, it's unusual to find people who say that they would have been willing to serve and they weren't contacted. You know, it seems very unlikely that that would be untrue.

So I would agree with Commissioner Gaziano. We should put this one off for a month. It
CHAIRPERSON CASTRO: We're already at 19 on this panel.

COMMISSIONER HERIOT: -- very unlikely on --

ACTING STAFF DIRECTOR TOLHURST: So I don't even know. Can we even add people on this? We're at 19. One, two, three, four, five, six, seven --

ACTING STAFF DIRECTOR TOLHURST: It's 19.

CHAIRPERSON CASTRO: That's right. You know, I don't accept that motion as a friendly motion to my motion. I want to vote on my motion on the SAC.

COMMISSIONER GAZIANO: Well, we extended the courtesy to --

COMMISSIONER HERIOT: Yes. It wasn't made as a friendly amendment.

COMMISSIONER GAZIANO: We extended the courtesy to Commissioner Titus because she wanted to examine one of the members. I would ask, in addition to examining whether the people I recommended were actually contacted, that they actually look closer so that we can determine whether the ideological balance is really as I think it is, which is 2 conservatives, 14 liberals.
COMMISSIONER TITUS: Mr. Chairman?

CHAIRPERSON CASTRO: Commissioner Titus?

COMMISSIONER TITUS: Thank you.

You know, that's how you see it. I see it very differently. We know that the independent label is not always, especially in performance of a person's ideology, but the way I look at these is very similar to the way our staff reviewed them and came up with the determination that they were balanced. It seems to me that there are two who clearly lean to the right, one or two who lean to the left, and the rest are pretty centrist, which is what seems to me you would want to go for on a committee.

COMMISSIONER HERIOT: Which two would you say lean to the right? And which two --

COMMISSIONER TITUS: Well, I'm not going to attribute something to people if we don't go into personal session.

And I would also ask if the commissioner -- if he was so concerned about these people being on the committee, if he contacted them or you had some communication with them in advance to be sure that they knew about it and were interested and were responding.

COMMISSIONER GAZIANO: Yes.
CHAIRPERSON CASTRO: Vice Chair? Madam 

Vice Chair? 

VICE CHAIR THERNSTROM: The analogy that Commissioner Gaziano just made with a question that Commissioner Titus raised about somebody already on the commission or somebody we were already voting on and looking into people who have not as of yet been proposed to be on this slate seems to me a very poor analogy. 

And Commissioner Titus had questions about somebody we were recommending or had been recommended for the Alabama slate. 

You are saying something quite different. 

Well, there are people who haven't been recommended that we should be looking at here, not the same. 

COMMISSIONER GAZIANO: I'm saying that the staff couldn't answer our questions about the process and whether the process was followed, the administrative instructions, and whether they actually called people who were willing to serve if they had been contacted by staff. So I think that a month to investigate that kind of process is in order. 

VICE CHAIR THERNSTROM: And it looks to me as if this is pretty balanced anyway. 

CHAIRPERSON CASTRO: Any other questions?
Any other discussion?

(No response.)

CHAIRPERSON CASTRO: I'm going to call the question. We're going to vote on it. Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: How is the motion --

COMMISSIONER HERIOT: Wait. What motion are we voting on here?

CHAIRPERSON CASTRO: We're voting on the motion which is on the floor, which is to --

COMMISSIONER HERIOT: There's been a motion?

CHAIRPERSON CASTRO: -- approve the slate.

COMMISSIONER HERIOT: Didn't we make a motion it wasn't --

CHAIRPERSON CASTRO: I don't believe so. I mean, he made a motion. It wasn't seconded.

COMMISSIONER HERIOT: I seconded.

COMMISSIONER TITUS: But you can't make a motion when a --

CHAIRPERSON CASTRO: Yes. We're in the middle of --

COMMISSIONER TITUS: -- motion is on the table.
COMMISSIONER HERIOT: Yes, you can.

That's not true.

COMMISSIONER TITUS: No, you can't. No, you can't.

COMMISSIONER HERIOT: It is a motion to amend.

COMMISSIONER TITUS: You can't amend a motion up or down.

CHAIRPERSON CASTRO: No. We're voting on this motion.

COMMISSIONER HERIOT: Yes, you can. Todd, what was your motion?

COMMISSIONER GAZIANO: The motion was to postpone the vote until next month, until we heard from our staff whether they followed the procedures.

CHAIRPERSON CASTRO: And I told you I did not accept that motion. It was not seconded. We're in the middle of voting on the main motion.

COMMISSIONER HERIOT: It's seconded.

CHAIRPERSON CASTRO: Then you can vote against this. So the motion again, just to reiterate, is the motion to approve the Illinois SAC, as was read.

I'm going to go individually. Madam Vice Chair, do you --
VICE CHAIR THERNSTROM: Yes. I agree with it.

CHAIRPERSON CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: I protest that this is not in order.

CHAIRPERSON CASTRO: Are you abstaining, then?

COMMISSIONER HERIOT: I guess I'll vote no.

CHAIRPERSON CASTRO: Okay. Commissioner Gaziano?

COMMISSIONER GAZIANO: I'm voting no and primarily because my motion was in order and it should have been voted on first.

CHAIRPERSON CASTRO: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I'm voting no. And that is not a reflection of the competency or integrity of any of the individuals on the SAC but for the same reasons that Commissioner Gaziano challenges it.

CHAIRPERSON CASTRO: Well-taken. Thank you.

Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes.
CHAIRPERSON CASTRO: Commissioner Titus?

COMMISSIONER TITUS: Yes.

CHAIRPERSON CASTRO: Castro? Yes.

So we have a majority in favor of the re-chartering the Illinois SAC with the members as we have indicated.

- RE-CHARTERING THE MINNESOTA SAC

CHAIRPERSON CASTRO: We now move on to the Minnesota State Advisory Committee. I move that the Commission re-charter the Minnesota State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based upon the recommendations of our Staff Director: Robert Lee Battle, Ryan M. Check, Kenneth O. Doyle, JoAnn Cardenas Enos, John A. Gilbertson, Kirk O. Kolbo, Velma J. Korbel, Nakima V. Levy-Pounds, Teresa J. Nelson, Shamus P. O'Meara, D. Craig Taylor.

Pursuant to this motion, the Commission appoints Nakima V. Levy-Pounds as Chair of this re-chartered Minnesota State Advisory Committee.

These members will serve as uncompensated government employees under this motion. The Commission authorizes the Staff Director to execute appropriate paperwork for the appointment.

Is there a second?
COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Okay. Discussion?

Commissioner Gaziano?

COMMISSIONER GAZIANO: I move to postpone consideration of this SAC until the staff determines whether they followed administrative instructions 5.9 on several of the people that I recommended, who were interested in serving, were not contacted by the staff, or even any preliminary evaluations or let me put it this way: I'm not sure. I'm not sure whether they were contacted.

And this is another wildly imbalanced left-leaning SAC. So I would like it postponed for an evaluation of that, re-evaluation of that, by staff as well.

COMMISSIONER HERIOT: Second.

ACTING STAFF DIRECTOR TOLHURST: Let me say I am not really in the hobby of assuming --

COMMISSIONER HERIOT: Second.

CHAIRPERSON CASTRO: Thank you.

ACTING STAFF DIRECTOR TOLHURST: -- SAC didn't do their job properly. I think these regional directors, we operate under the assumption that they followed the AI unless there is evidence otherwise.

COMMISSIONER HERIOT: But there is.
COMMISSIONER GAZIANO: I presented evidence.

COMMISSIONER HERIOT: There is.

COMMISSIONER GAZIANO: I presented evidence.

ACTING STAFF DIRECTOR TOLHURST: You said you weren't sure and wanted to know.

COMMISSIONER GAZIANO: No, no, no, no, no. I said that it appeared -- first of all, it's wildly imbalanced. So that is --

ACTING STAFF DIRECTOR TOLHURST: Regarding the process of contacting people, for the last AI, you have a question about phone calls, which Chris will follow up on with that --

COMMISSIONER GAZIANO: And I would like to know unless you can tell me right now whether the four whom I recommended were contacted.

ACTING STAFF DIRECTOR TOLHURST: Well, with the last SAC, you seemed to have some affirmation information they were telling you they weren't, but that doesn't seem to be the case here.

COMMISSIONER HERIOT: Is it correct that it's the same person working on the SAC?

ACTING STAFF DIRECTOR TOLHURST: They're not on the list. So are you assuming they weren't
contacted?

COMMISSIONER HERIOT: Is it correct that it's the same person working on the SAC?

ACTING STAFF DIRECTOR TOLHURST: Yes.

COMMISSIONER HERIOT: Okay. I would say we have very clear evidence.

ACTING STAFF DIRECTOR TOLHURST: What is your --

VICE CHAIR THERNSTROM: What is your --

COMMISSIONER HERIOT: Of failing to contact the people who were recommended by telephone, as required by the AIs.

COMMISSIONER GAZIANO: What I'd like to know -- if my motion passes, what I'd like to know is since they told my staff that they were willing to apply, whether they were actually reached, whether such information was solicited.

Now, if staff decides not to act on them, that's another matter. But I at least want to know what the process was. And it looks like the final slate is quite imbalanced. So that's a second factor.

CHAIRPERSON CASTRO: Are there any other comments on this motion?

(No response.)

CHAIRPERSON CASTRO: If not, we'll call
the question on the motion to delay.

COMMISSIONER GAZIANO: Has it been seconded?

CHAIRPERSON CASTRO: Yes, it's been seconded by Commissioner Heriot. It was moved by Commissioner Gaziano, seconded by Commissioner Heriot. We will again take a vote. Vice Chair Thernstrom, how do you vote on the motion to delay?

VICE CHAIR THERNSTROM: No.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote on the motion to delay?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: No.

CHAIRPERSON CASTRO: I vote no.

CHAIRPERSON CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: No.

CHAIRPERSON CASTRO: Commissioner Titus?

COMMISSIONER TITUS: No.

CHAIRPERSON CASTRO: The motion fails.
We now move on to the motion, the main motion, on approving the Minnesota SAC as read into the record earlier. Is there any additional discussion on that? Vice Chair?

VICE CHAIR THERNSTROM: I just want to make one comment. It seems to me that the last vote was and the previous one as well, in effect, a vote on how much confidence we have in the staff.

In fact, my vote in both instances was a vote on competence for the work that the staff has been doing and a thumb’s up for Kim Tolhurst, who has really under extraordinary circumstances been I know working night and day.

CHAIRPERSON CASTRO: I second that motion.

ACTING STAFF DIRECTOR TOLHURST: I appreciate that.

Let me say regarding the SACs, I don't know all in this case. These were SACs that were created under Staff Director Dannenfelser. These were SACs that Chris Byrnes had assisted me in approving. All I care is that they are properly done. And when Chris assures me that they are with his greater experience than mine regarding SACs, I take that to be true. And I have similar confidence in him that he has conducted the analysis properly.
If we learn that a particular regional director is not following the AI regarding calls, we will certainly deal with that. But I don't have evidence of that at the time.

CHAIRPERSON CASTRO: Thank you.

Okay. Hearing no further discussion, we will vote on the motion to approve the Minnesota SAC.

All those in favor say aye.

(Whereupon, there was a chorus of "Ayes.")

CHAIRPERSON CASTRO: Opposed?

(Whereupon, there was a chorus of "No.")

CHAIRPERSON CASTRO: Commissioners Gaziano and Heriot oppose. Commissioner Kirsanow? Oh, any abstentions?

(No response.)

CHAIRPERSON CASTRO: Commissioner Kirsanow, are you still there?

COMMISSIONER KIRSANOW: I am. I vote yes.

CHAIRPERSON CASTRO: Votes yes to approve?

Okay. As do I. So we have two in opposition and the balance in support of the motion. It passes.

VI. APPROVAL OF MARCH 11, 2011 MEETING MINUTES

CHAIRPERSON CASTRO: Next on the agenda is approval of the March 11th meeting minutes. Can we have a motion on that?
COMMISSIONER ACHTENBERG: So moved.

CHAIRPERSON CASTRO: Second?

VICE CHAIR THERNSTROM: Second.

CHAIRPERSON CASTRO: Any discussion, any changes?

(No response.)

CHAIRPERSON CASTRO: If not, all those in favor say aye.

(Whereupon, there was a chorus of "Ayes.")

CHAIRPERSON CASTRO: Any opposed?

COMMISSIONER HERIOT: I didn't get a chance to vote. I'm still --

CHAIRPERSON CASTRO: I'm sorry.

COMMISSIONER HERIOT: -- conferring with my special assistant here.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER HERIOT: My special assistant has the comment that we have got a heading here that makes it look like we were talking about White House nominees for Acting Chair and Staff Director. We didn't actually do that. I would strike that language.

CHAIRPERSON CASTRO: I think that was how the actual agenda item read. At the time, we thought that there might have -- it was set up before there...
was actually a nomination that was sent. So we thought that we might get the Chair and the Staff Director at the same time.

So if you look back at the agenda item, the actual agenda, for that date, that is how it was listed. Yes. Okay.

So all those in favor -- hold on a second. Okay. Oh, I see. So "White House Nominees for Chair, Vice Chair" is how it was read, not "Acting Chair"? Is that what you're saying? Okay. And Staff Director. So we will make that change.

COMMISSIONER HERIOT: It should have said Vice Chair.

CHAIRPERSON CASTRO: Vice Chair, not Acting Chair. Okay. You're right. Sorry. I misunderstood what you were saying.

COMMISSIONER HERIOT: With that change, then.

CHAIRPERSON CASTRO: Yes. Then all in favor of the motion for the minutes with that change say aye?

(Whereupon, there was a chorus of "Ayes.")

CHAIRPERSON CASTRO: Any opposed or abstentions?

(No response.)
CHAIRPERSON CASTRO: Any announcements?

(No response.)

CHAIRPERSON CASTRO: Hearing none, motion to adjourn?

VICE CHAIR THERNSTROM: So moved.

CHAIRPERSON CASTRO: All in favor?

(Whereupon, there was a chorus of "Ayes.")

CHAIRPERSON CASTRO: All right. Let's go home.

(Whereupon, the foregoing matter was concluded at 12:38 p.m.)