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The Commission convened in Room 540 at 624 Ninth Street, Northwest, Washington, D.C. at 9:35 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ABIGAIL THERNSTROM, Vice Chairman

ROBERTA ACHTENBERG, Commissioner

TODD F. GAZIANO, Commissioner

GAIL L. HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner (via telephone)

DAVID KLANDNEY, Commissioner

MICHAEL YAKI, Commissioner

KIMBERLY TOLHURST, Delegated the Authority of the Staff Director + Acting General Counsel
STAFF PRESENT:
MARGARET BUTLER, Acting Chief, OCRE
CHRISTOPHER BYRNES, Senior Attorney-Advisor
          to the Office of the Staff Director
PAMELA DUNSTON, Chief, ASCD
ALFREDA GREENE
TINALOUSE MARTIN, Director, OM
PETER MINARIK, Director, RPCU
TORRANCE MONTGOMERY
LENORE OSTROWSKY, Acting Chief, PAU
MICHELLE RAMEY-YORKMAN
JOHN RATCLIFFE, Chief, Budget and Finance
EILEEN RUDERT
DAVID SNYDER

COMMISSIONER ASSISTANTS PRESENT:
NICHOLAS COLTON
ALEC DEULL
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
RICHARD SCHAMEL
ALISON SOMIN
MARLENE SALLO
AGENDA

I. APPROVAL OF AGENDA ............................... 5

II. APPROVAL OF THE DECEMBER 19, 2011 MEETING MINUTES ............................... 7

III. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS:

   X Update on 2012 Statutory Enforcement Report Planning ............................... 7

   X Update on 2012 Trafficking Briefing planning ......................................... 23

   X Scheduling of 2012 Immigration Briefing ................................................. 23

   X Review of Concept Papers/Approval ......................................................... 23

IV. MANAGEMENT AND OPERATIONS

   X Staff Director's report .................... 63

   X Chief of Regional Programs' report ...... 64

V. STATE ADVISORY COMMITTEE ISSUES:

   X Re-chartering the Hawaii SAC .............. 72

VI. ADJOURN .............................................. 101
PROCEDINGS

(9:37 a.m.)

CHAIRPERSON CASTRO: This meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is now 9:39 a.m. on January 13th, 2012. This meeting is taking place here at the Commission's headquarters at 624 9th Street, N.W., in Washington, D.C.

I'm Chairman Marty Castro. Commissioners who are present here at the meeting are myself, our Vice Chair, Commissioner Thernstrom, Commissioner Heriot, Commissioner Gaziano, Commissioners Kladney and Achtenberg, and Commissioner Yaki. Commissioner Kirsanow is joining us by phone, and I heard you on there earlier. Is that right, Commissioner Kirsanow, just to confirm?

COMMISSIONER KIRSANOW: That's correct, Mr. Chairman.

CHAIRPERSON CASTRO: A quorum of the Commissioners is present. Is the person delegated the authority of Staff Director present?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Yes.

CHAIRPERSON CASTRO: Is the court reporter present? It's a yes. So, the meeting shall now come to
order.

The first order is the Approval of the Agenda.

I. APPROVAL OF AGENDA

CHAIRPERSON CASTRO: I move that we approve the agenda. Do we have a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Okay, any amendments?

(No response.)

CHAIRPERSON CASTRO: Hearing none, let's vote to approve the agenda. All in favor say aye.

(Chorus of ayes.)

CHAIRPERSON CASTRO: Opposed? Any abstentions? Okay. The motion passes 8-0.

Before we move over to the Approval of the Minutes, I just want to acknowledge that Monday is Martin Luther King Day, the federal holiday. And I just want to take an opportunity for us to acknowledge the achievements and the celebration of the life of Dr. Martin Luther King.

As you all know, he was a leader of our civil rights movement in the United States from the 1950s until the time of his assassination in 1968. His non-violent activism is really what rose the nation's awareness on civil rights violations, and ultimately
earned him the Nobel Prize at the age of 35.

Between 1957 and 1968, Dr. King traveled more than a million miles and spoke over 2,500 times appearing wherever there was injustice to be protested and action to be taken.

His leadership was fundamental to the civil rights movement's success in ending illegal segregation of African Americans in the south and in other parts of the United States. The contributions made by Dr. King and other civil rights leaders influenced the passage of the Civil Rights Act of 1964, and remains truly the basis for the Commission's work and authority today.

So, on Monday let's not only celebrate the legacy of Dr. King, but let us continue to work to make that dream that he talked about a true reality in this country.

Now, I would like to a motion to approve the December 19th meeting, unless anyone wants to add something.

VICE CHAIR THERNSTROM: I want to add something.

CHAIRPERSON CASTRO: Madam Vice Chair.

CHAIRPERSON CASTRO: Exactly. Thank you for pointing that out. Any other comments? If not, then we will move on to the approval of the Minutes.

**II. APPROVAL OF THE DECEMBER 19, 2011 MEETING MINUTES**

CHAIRPERSON CASTRO: I make the motion that we approve the Minutes of the December 19th meeting. Is there a second?

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: All those in favor say aye.

(Chorus of ayes.)


Next on the agenda is the Update on the 2012 Statutory Enforcement Report under the Program Planning section of our agenda.

**III. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS**

**UPDATE ON 2012 STATUTORY ENFORCEMENT REPORT PLANNING**

CHAIRPERSON CASTRO: Ms. Tolhurst.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: A couple of updates. Last Friday I circulated the annotated outline to Commissioners. I
hope you all have had a chance to take a look at that, and the comments on the annotated outline are due on February 6th.

Of course, next month, February 3rd we will have our briefing to support this report. And also this week we received, or began to receive discovery from both the states and the Department of Justice, OGC Attorney Dave Schneider and I are just now digging into that, and probably would be in a better position next month to give a fuller report on what we got and what it's looking like, but we are continuing to negotiate with both the Department and the states to get the data that we need.

CHAIRPERSON CASTRO: Okay. Any questions? If not, can you give us an update on the Trafficking Briefing? I'm sorry, I apologize. The Chair recognizes Commissioner Heriot.

COMMISSIONER HERIOT: I have some concerns about the panels as they have been put together, or rather as to one of the panels. Panel 3 as it's currently configured has representatives of three states, and a representative of the ACLU, and the Lawyers Committee on Civil Rights. And I regard that as a very unbalanced panel.

Both the ACLU and the Lawyers Committee on
Civil Rights takes similar positions that are left of center, and I think having a representative of an organization that takes a somewhat more conservative approach would be a proper way to balance that panel.

Now, I know that -- I believe it was at our November meeting, Commissioner Gaziano suggested that we invite Ed Bloom to be on that panel. I think the other people who would be similarly situation who also would be good on that panel, he takes a somewhat more conservative view of the issues that are involved in this case. I don't think that anybody is wedded to him, in particular, but I do think that the panel as it's currently configured is quite imbalanced, and that it really needs a representative who would be able to speak freely.

I don't know what position the state representatives will take, but state representatives obviously have a very different -- different sets of constraints from people who represent organizations like the ACLU and the Lawyers Committee on Civil Rights. And I would like to see an additional witness invited for that panel, and one who would take a more conservative view.

CHAIRPERSON CASTRO: Madam Tolhurst -- Ms. Tolhurst?
DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: I think probably I'll just explain why I set up the panel that I did, and then it's really for you all to discuss and decide. If you want me to alter the panel, I will.

I think that Panel 3 is quite balanced. The representative from Louisiana is the Assistant Attorney General. It's a Republican state. The representative for Georgia is actually not working for the state. She's outside counsel and a partner at a law firm with expertise in this area. She's also the General Counsel for the Republican party.

The representative from Alabama, John Parks, is at the same law firm, and previously was a visiting Legal Fellow at the Heritage Foundation. So, we have three people who are going to come with conservative views.

The reason I declined, and we had extensive back and forth on this to include Mr. Bloom or similar suggestions was that, primarily, because upon looking at their background, their expertise or at least current participation seemed to me to focus largely on the constitutionality of Section 5, which has been explicitly excluded from this work in the Concept paper that Commissioners approved.
So, that's why I set it up, and you all can instruct me to change it if you prefer.

CHAIRPERSON CASTRO: It sounds to me like the panel is balanced, and it also concerns me that we're -- these potential speakers would be trying to get into a topic that is not the subject of the concept paper. So, it seems to me that we have balance. And, frankly, I am persuaded that our career staff who come up with this, and made an effort have, indeed, put a balanced panel together. So, I'm sure -- your objections are noted for the record, but I don't see that we need to change this; although, I'll let Commissioner Gaziano say something, and then we'll move on to the next topic.

COMMISSIONER GAZIANO: I hope not just to note my concurrence with Commissioner Heriot's statement for the record, but also to persuade you -- some of you all, at least, that we need to add a witness.

I do know Jack Park, but I -- and I think I know one of the other witnesses, but the original C-- but they're still constrained. They've still got to represent the states. The states are under the thumb of the federal government in getting their approvals. So, someone who has a obligation to zealously
represent the interests of the state is not free to express his or her own views.

Some of the original reasons we heard for -- before these witnesses were even identified didn't make sense to me not to include a third person. There is one individual who we have more recently suggested to be invited who is a state official from Virginia. But if he is asked to testify in his individual capacity, or he has worked with Virginia, would be in a better position to express his own individual views as an alternative.

I still don't think the reasons given not to invite Bloom just because he also has a constitutional view which this Committee would not want to hear at the hearing are good ones, but there are plenty of other people to invite who would bring testimony only on the burden of Section 5 as it's currently -- the burden on states and the impact on citizens in those affected states.

I think we would -- the witnesses from the ACLU and the Lawyers Committee for Civil Rights minimize whatever burdens there are, so I move that the Staff Director invite an additional witness who has a more skeptical view about the burdens that Section 5 impose.
COMMISSIONER HERIOT: I second that motion.

CHAIRPERSON CASTRO: I believe that motion would be out of order because --

COMMISSIONER HERIOT: I second that motion.

CHAIRPERSON CASTRO: -- truly the Staff Director's purview in terms of putting together -- or in this case, I don't know if you're wearing your Staff Director or your OGC hat, but it's my understanding that you won't have the purview to prepare these panels.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Well, you all are free to --

CHAIRPERSON CASTRO: Are we? Okay.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: You are free to do that.

CHAIRPERSON CASTRO: I just want to make sure. Commissioner Yaki?

COMMISSIONER YAKI: Yes, two things. One, I agree with the Staff Director's assessment that her view of one of the extra people added would go to a topic that when we approved this we explicitly said was not going to be within the ambit of the briefing; that is, the constitutionality issue, number one.

Number two, more importantly, these are-- if I may direct this to the Staff Director. These are
all states that have received pre-clearance at this point?

DIRECTOR TOLHURST: Yes.

COMMISSIONER YAKI: So, in terms --

DIRECTOR TOLHURST: Although, they weren't selected for that reason, but that's how it turned out.

COMMISSIONER YAKI: But in terms of their ability to express the burden, so to speak, as Commissioner Gaziano characterized it, they have certainly gone through the entire process. Having gone through the entire process, I do not believe at that point there is any retaliatory issue involved in terms of any public statements they may make regarding a determination by Justice upon their application because, in fact, they have received pre-clearance. So, I think they're in -- and since some of these states were the ones who yowled the most about this issue, I think that they are perfectly able and willing to provide the kind of robust, vigorous debate that we would need at this hearing.

And I think that, in fact, the witnesses I would say for the other side, as it were, are -- could be amplified simply given the fact that their burden
is such that they have to deal with this more than the individual states involved. But I'm content with what you've done.

CHAIRPERSON CASTRO: Let me just say just for procedural reasons then, since that motion would be in order, I just want to clarify that the motion was made.

OPERATOR: Excuse me. Kathy Helm joins the conference.

CHAIRPERSON CASTRO: Thank you.

COMMISSIONER YAKI: Who?

CHAIRPERSON CASTRO: Commissioner Gaziano made a motion that was seconded by Commissioner Heriot.

COMMISSIONER HERIOT: Aye.

CHAIRPERSON CASTRO: So, we have a valid motion on the floor for discussion. The Chair first recognizes Commissioner Achtenberg, then Commissioner Heriot.

COMMISSIONER ACHTENBERG: Well, I'm distressed to learn that the motion is in order. Let me say that given that the motion is in order, I think it would be extraordinarily bad form and bad policy for us to start taking votes on direction to the Staff Director about who to put on a panel, and who not.
Now, my tenure on this Commission has been brief. I think a year today, and I've been counting every minute of it. And is there precedent for taking a vote to force the Staff --

CHAIRPERSON CASTRO: Let me just clarify.

COMMISSIONER ACHTENBERG: -- Director to put someone on a panel or not?

CHAIRPERSON CASTRO: My -- the question I asked when I said this was out of order, the Acting General Counsel said it's not, so --

COMMISSIONER ACHTENBERG: It's in order. I understand it's in order.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER ACHTENBERG: My objection isn't -- it would be about --

CHAIRPERSON CASTRO: I understand.

COMMISSIONER ACHTENBERG: -- precedent to set.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER ACHTENBERG: And I wouldn't like to see that.

COMMISSIONER YAKI: If could just briefly --

CHAIRPERSON CASTRO: So, first Commissioner Heriot, our Vice Chairman, Commissioner Gaziano.
COMMISSIONER HERIOT: Okay. I guess I have a couple of points to make here. One on the notion that this panel is balanced because the states represent the interests that are posed to ACLU and the Lawyers Committee on Civil Rights.

The states are responding to the federal position. We've got another panel where we have a Democratic administration testifying as to their understanding of the law and policy at work here. And the states were responding to that, not to the ACLU.

On the issue of the constitutionality, the argument for the unconstitutionality here is based on undue burden which is exactly the issue that we are investigating here. So, you really can't separate the two issues. And anyone who makes the constitutionality issue is building it upon the very issue that the Commission is, in fact, looking into. So, we can truncate it, and not discuss it in terms of constitutionality, but it's the same argument whether we treat it as a constitutional argument, or just an ordinary policy argument.

So, it is not the case that these witnesses would be testifying purely to an issue that is off the table. They would be testifying as to the burden created by the Voting Rights Act in this
context.

If you exclude witnesses like this, you know, it looks bad for the Commission. They are likely -- I can't say for sure, but it's entirely possible that we would get testimony submitted anyway, and instead it would simply be testimony where they're going to be able to say we have been excluded. And I don't think that's a good thing for the Commission. So, I would much prefer not to have to go down that road and have a report that looks at the issue in a way where we feel we've really been briefed by all the witnesses who need to be here.

And as for the Commission's, as opposed to the Staff Director's authority here, you know, I've said it a million times, I'll say it one more time. The eight members of the Commission, we are the Commission. We make all decisions. Things can be delegated to the Staff Director, but anything that can be delegated can be brought up in the ordinary Commission meeting. And I believe we, in fact, have a duty to make sure that this briefing is the best it can be.

CHAIRPERSON CASTRO: Vice Chair.

VICE CHAIR THERNSTROM: Well, I found what Commissioner Heriot said interesting just now, because
what I was going to say when I raised my hand was that the burden on Section 5 is, in fact, not the topic that we have agreed to investigate. And that is just code words for saying we need to look at the constitutionality. And Commissioner Heriot just said well, they're the same thing. Right. And, therefore, the issue is not on the table, neither the burden nor the constitutionality, which are one and the same, as Commissioner Heriot just said.

Second, I don't think it can be argued we are excluding witnesses implicitly on ideological grounds. I think that that is an unfair description of what the Staff Director has done. And, in fact, that panel looks balanced to me, as well.

CHAIRPERSON CASTRO: Commissioner Gaziano, then I'll call the question.

COMMISSIONER GAZIANO: Yes, just to -- and I suppose Pete wants to be heard.

CHAIRPERSON CASTRO: Oh, yes, sorry.

COMMISSIONER GAZIANO: The Commissioners bear the responsibility to each other to create balanced panels. And I think that the Acting Staff Director has done a very good job in most respects, but that doesn't mean that in one instance we disagree with the way she's tried to satisfy a majority of us.
And then it's our obligation to each other and to the Commission to -- I think that we -- certainly, in the past we've actually instructed particular people to be invited. Not only particular people, we've subpoenaed -- voted to subpoena particular people. So, my motion is much more deferential and much more respectful of the career staff.

There is one -- just for the record, William Herd is one of the people who has expressed a willingness to testify if he were invited, and he is the official from Virginia who would be free, though, to speak in his own capacity, because he wouldn't be representing the state in that. But it is -- I don't think there's a serious argument that can be made that taking all three panels into consideration, there isn't a single person who could speak in their individual capacity as a VRA skeptic, and especially not on the third panel.

And I will regret if I have to make that an issue during the briefing, and during any statement that all right, I would much rather -- it seems silly to me not to try to make this concession so that all of us on the Commission feel that there was at least one witness who expressed a view that is common. If I lose the motion, then it will be noted for the record,
but I will probably also note it in dissenting statements, or whatever statement I happen to be a part of. And that's a shame.

CHAIRPERSON CASTRO: Ms. Tolhurst, and then we'll call the question.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: I would like to put on the record that panel 2 absolutely contains Section 5 skeptics, and I made sure of that in constructing the panel.

CHAIRPERSON CASTRO: And then we can also always have to the extent that they're relevant to the topic people who submit written testimony. Unfortunately, we can only have a certain number of people on panels, and it is the very nature of our briefings that we can never have every person that we would all want to have on a panel, so it's just impossible.

VICE CHAIR THERNSTROM: Can I -- go ahead. I just want to say one last word.

CHAIRPERSON CASTRO: Okay, then I'll call the question. Go ahead, Madam Vice Chair.

VICE CHAIR THERNSTROM: Look, into -- among the group of eight of us one Commissioner who is on record in two books 22-years apart is on record as a skeptic of Section 5, so we're not exactly short of
that voice.

CHAIRPERSON CASTRO: So, we're going to call the question on this. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

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

VICE CHAIR THERNSTROM: No.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: No.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADENEY: No.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: And I vote no. The motion loses one, two, three, four, five to three.
We will now move on to an Update on Trafficking, the Trafficking Briefing. Madam -- Ms. Tolhurst, Madam Acting General Counsel.

III. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

UPDATE ON 2012 TRAFFICKING BRIEFING PLANNING

Acting STAFF DIRECTOR TOLHURST: Yes. So, I circulated in the meeting materials some of the proposed panelists for the Trafficking Briefing. Margaret Butler in OCRE has been taking charge of this briefing, and many of the people included here were suggested, or some of the people here were suggested by Commissioners. If Commissioners have any other suggestions they may send them directly to Margaret.

The other piece of this is that on January 27th we'll be sending out interrogatories to the relevant agencies, and those have been drafted by Chris Byrnes and are pretty much ready to go.

CHAIRPERSON CASTRO: Any questions on Trafficking?

(No response.)

CHAIRPERSON CASTRO: Hearing none, we'll move on to the next item on the agenda, which is the Scheduling of the 2012 Immigration Briefing.

III. PROGRAM PLANNING UPDATE AND
DISCUSSION OF PROJECTS

SCHEDULING OF 2012 IMMIGRATION BRIEFING

CHAIRPERSON CASTRO: At present, we are scheduled to hold our statutory report briefing, as you know, at our February 3rd meeting. The Trafficking Briefing is set up for our April meeting. My goal today is to have for this year at least five or six 2012 briefings so that we fulfill our obligation. It's possible we might be able to squeeze a smaller one in there. It's all going to be ultimately driven by budget.

As you know, we're also going to be moving our facility sometime in May or June, so with regard to the Immigration Briefing, what I'd like to do is set that for our Commission meeting on June 8th. That'll give us time later, as well, to do any other briefings that we would agree on today. So, for example, June -- I'm sorry, July through December we could schedule an additional two to three hearings.

Because there might be a chance due to our move that the conference room here would not be available on June 8th, we can also look to see and talk to the Acting Staff Director about another federal agency possibly hosting us in a room like this so that we don't have to go out and rent space. And that
gives us enough time to prepare for that.

So, I would like to move to have the hearing for the Immigration topic for the June 8th meeting.

COMMISSIONER HERIOT: Second.

CHAIRPERSON CASTRO: Okay. Any discussion on that?

(No response.)

CHAIRPERSON CASTRO: Hearing none, all those in favor say aye.

(Chorus of ayes.)


The next item on the agenda is the Consideration of 2012 Concept Papers based on the briefing topics based on the concept papers.

III. PROGRAM PLANNING UPDATE AND DISCUSSION OF PROJECTS

REVIEW OF CONCEPT PAPERS/APPROVAL

CHAIRPERSON CASTRO: As you know, Ms. Tolhurst distributed to us a concept paper ranking form. It's my hope today to be able to vote and approve at least, as I said earlier, two topics. That would give us the five that we have for the year. If we can do a sixth one, it maybe might be a small one
depending on budget, if we can get a small panel. We
might be able to do six, but what I'd like to do at
least today is walk away with two approved so that
we've got our 2012 dance card full.

If we were to approve more than that, we
can certainly begin to do those in Fiscal Year '13.
And, in fact, we may be in a position to do that today
depending on how these votes go. So, once we decide
which concept papers today we want to move forward
with, we can then designate which ones, if we have
more than a couple, would go on to 2013.

We do have this ranking form. We're not
necessarily driven by it, but just in the interest of
time and trying to take the information we got from
the ranking form, what I will do is we will start our
discussion with the top six, since we've got 12 papers
based on the ranking form.

What I'd like to do is take them in order
of their ranking from one to six. We will have a brief
discussion on each of those proposed concepts, and
then we will entertain motions from the Commissioners
as to the particular concept papers, not necessarily
in the order of discussion.

So, what I'd like to do then is begin with
a discussion on the Peaceful Coexistence Reconciling
Non-Discrimination Principles with Civil Liberties, which is a paper that was originally prepared by Commissioner Kirsanow. And I know there have been changes that I think Commissioner Kirsanow has accepted from Commissioner Kladney.

COMMISSIONER KLASDNEY: I believe so. You should ask Commissioner Kirsanow.

CHAIRPERSON CASTRO: Yes. So, why don't I open the floor to Commissioner Kirsanow. And to the extent necessary, Commissioner Kladney, to discuss the Peaceful Coexistence Concept Paper.

COMMISSIONER YAKI: Is this --

COMMISSIONER KIRSANOW: Thanks, Mr. Chairman. The concept paper speaks for itself. In terms of a discussion I had with Commissioner Kladney, it's I think a very timely topic given that the Supreme Court just, in fact, issued the Hosanna-Taber decision, but didn't put an end to continuing First Amendment jurisprudence or an addition in this regard.

We've got more and more frequently a flurry of cases involving the intersection between religious rights and liberties and discrimination law, and civil liberties in general. And pursuant to Hosanna-Taber, I suspect the EEOC will be reissuing guidances, and I think a hearing along those lines
would be very helpful.

Commissioner Kladney had provided some very helpful amendments to my original concept paper, and we had a discussion concerning the fact that the concept as originally proposed may be somewhat expansive. I still think we can entertain some witnesses or evidence with respect to, for example, the COS case in matters similar to that. And, again, I just think this is a timely topic that the Commission has not addressed at least in my tenure.

CHAIRPERSON CASTRO: Commissioner Kladney do you have anything you want to add?

COMMISSIONER KLADNEY: No, I think Commissioner Kirsanow said it all. I mean, if everyone has looked at the amended paper -- has everybody had a copy?

COMMISSIONER ACHTENBERG: I don't know if it's the amended paper.


CHAIRPERSON CASTRO: Correct.

COMMISSIONER KLADNEY: I guess everybody's silence means they got it.

VICE CHAIR THERNSTROM: I didn't.

CHAIRPERSON CASTRO: So, the significant
change that was made to it was -- was there a
significant change made?

COMMISSIONER KLADNEY: Well, I think we
just kind of focused on more relevant pieces. Is that
right, Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I'm sorry? I didn't
hear you, Commissioner Kladney.

COMMISSIONER KLADNEY: The Chair asked if
we made significant changes, and I said no, I think we
just more or less focused on the more relevant pieces
of the paper.

COMMISSIONER KIRSANOW: I think that's
accurate.

CHAIRPERSON CASTRO: Okay. So, as I said,
we're going to just discuss these, and then we'll come
back and we'll see if there's any motions that folks
want to make on these. Are there any questions about
that, Peaceful Coexistence? If not, we'll move on to
the next topic.

(No response.)

CHAIRPERSON CASTRO: Okay. The next topic
is Increasing Compliance with Section 7 of the NVRA.
Commissioner Kladney, that's your paper.

COMMISSIONER KLADNEY: Yes. And I just
thought it was an interesting topic. There's been some
action taken regarding enforcement or asking people to be more cognizant of this in the states. And registrations for people to vote have gone up significantly as a result. Although I have been informed that a lot of these done in DMVs and public assistance places wind up being changes of address which are very relevant. That Ohio, for instance, went from 43,000 in 2006 to 247,000 in I think it's 2010. So, I think if there's more attention paid we can get more people voting. That's the idea behind the paper.

CHAIRPERSON CASTRO: Okay. Any questions? The Chair recognizes the Vice Chair.

VICE CHAIR THERNSTROM: Well, I would have liked to include in this topic, although maybe it expands it to a degree that people would feel uncomfortable with. I would have liked to have included the whole question of the integrity of the voter rolls. You're about to respond to that.

COMMISSIONER Kladney: Yes, Madam Vice Chair. I even talked to Mr. Gaziano, and Commissioner Heriot. Commissioner Gaziano, pardon me.

COMMISSIONER GAZIANO: That's fine.

COMMISSIONER Kladney: Commissioner Heriot this morning about that. I was on holiday when the votes were taken on this, and when I got back which
was Monday, I was told that some people had expressed some interest in eight. I haven't had time to look at it myself. No one else has submitted a concept paper on it. If someone would submit a concept paper, I would look at it and research it and take a look. I mean, I don't know that much about eight since I haven't looked at it that much, but if someone would submit a paper on it, we can take a look at it and vote on it. But I do understand your position.

CHAIRPERSON CASTRO: Any other questions on that? If not -- I'm sorry, Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Is there a particular timing, Mr. Chairman, that Commissioner Kladney has in mind if this were to be undertaken?

COMMISSIONER KLADENY: I, actually -- when we were speaking this morning we talked about if someone wanted to submit something, we could work on it and look maybe at the end of this year, the beginning of next year.

CHAIRPERSON CASTRO: So, Fiscal Year '13?

COMMISSIONER KLADENY: Yes. Yes, whenever the Fiscal Year is.

CHAIRPERSON CASTRO: Yes. I think -- all I think about is Fiscal Year now.

COMMISSIONER GAZIANO: But as I understand
it, Commissioner Kladney doesn't want to necessarily accept the amendment as a friendly amendment right now.

COMMISSIONER KLABNEY: Correct.

COMMISSIONER GAZIANO: So, several of us I think are glad to try to help refine the Concept paper if you don't want to do it today.

COMMISSIONER KLABNEY: Well, we'll see how the vote is and then we'll working on refining it. We will work on refining it regardless of what the vote is today. How's that?

COMMISSIONER GAZIANO: Well, yes, we'll see.

COMMISSIONER KLABNEY: Okay.

COMMISSIONER GAZIANO: The vote could leave this open. The vote could foreclose it. We'll see.

CHAIRPERSON CASTRO: Well, you know, if something loses it doesn't prohibit someone from bringing it back again for consideration as a 2013 topic.

VICE CHAIR THERNSTROM: No, absolutely not.

COMMISSIONER KLABNEY: So, I have lost before.

CHAIRPERSON CASTRO: As we all have. The next topic is also one of Commissioner Kladney's,
Disparities in Criminal Sentencing and Alternatives to Incarceration. Commissioner Kladney.

COMMISSIONER KLADNEY: On this paper, there's -- this one is more important to me. I've also expressed that to several Commissioners. We have in this country a problem, and it's mass incarceration of people. It turns out that the racial numbers are high, but I'm more interested in as a focus the administration of justice, and how successful we've been or not in terms of 40 years of minimum mandatory sentences, putting people in prison for 15, 20 years at a time, and life. And seeing if there's some way to break the cycle of violence within the inner city neighborhoods, and see if we can bring peace to those neighborhoods, and actually try and stop the incarcerations, which actually affect people very significantly, whether it's their jobs, future education, their family lives, things like that. And I think the paper is fairly self-explanatory in that regard.

CHAIRPERSON CASTRO: Any questions for Commissioner Kladney on that? Yes I, too, want to say that -- I agree with everything you said. There's an excellent book on this topic we've discussed as well by Michelle Alexander called the New Jim Crow.

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There's a lot of resources out there on this, and it's an issue that I've heard a lot about in my travels recently, as well.

The next topic -- and Commissioner Kladney's got the trifecta going here. It's three of his papers in a row have made the top six. So, the Anti-Discrimination Provisions in Virginia's State Adoption Regulations, which I understand is a smaller briefing topic.

COMMISSIONER KLADNEY: Yes, this would be a -- I would anticipate a one-panel topic. Basically, the -- Virginia has a regulation that says foster parents cannot discriminate on the basis of race, color, gender, national origin, age, religion, political belief, sexual orientation, disability, or family status; yet, they passed a regulation I think it was a month or two ago -- must be two months ago now saying that adoption agencies could not discriminate on the basis of race, color, and I believe national origin, and dropping the rest of that. And I was wondering if we could look at that in terms of does that mean that's a floor, or is that a top in terms of what they're required to look at in terms of discrimination?

CHAIRPERSON CASTRO: Okay. Any questions
for Commissioner Kladney on that?

(No response.)

CHAIRPERSON CASTRO: Hearing none then we'll move on to the next topic, Evaluating Federal Outreach to Arab and Muslim American Communities Post September 11th. Commissioner Yaki?

COMMISSIONER YAKI: Thank you very much, Mr. Chair. And this was my only topic that I submitted and for veterans of the Commission, they know each one that I've submitted in the past ten years after 9/11.

This Commission early on in early 2002 held some hearings regarding some of the rising anti-Muslim and anti-Arab hate crimes and violence, and fear that came about after the 9/11 attacks.

Since then, we have not done any evaluation of exactly the many federal efforts that were put into place at that time. I think that what this briefing will do is sort of document what has been going on, what is the state of play in terms of Islamophobia as it exists today.

There have been some very public and notorious incidents, but then there are also questions of how widespread is it really? This is to try and get data on it to inform us and policy makers on the
nature of the discrimination that does or does not exist.

I would just simply note that I want to thank the Commissioners who have worked on this with me and supported it and who have given lots of feedback that helped me to change its focus and make it more coherent and cohesive in terms of its overall structure.

But I would note that from my own point of view, I am concerned about reports of CIA linkages with the New York Police Department. I am concerned about reports of federal surveillance inside houses of worship. I am concerned about some of the opinion polls out there regarding Muslim Americans and the actions by companies such as Lowe's, or Kayak.com in terms of pulling advertising from shows that are actually showing positive values in the Muslim American community.

But this is my individual point of view. This is to get a holistic fact-based assessment and review, and I welcome your support.

CHAIRPERSON CASTRO: Any questions for Commissioner Yaki? Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Thank you, Mr. Chairman. I was sorry to see those points deleted from
your original paper. I would have voted to adopt the
original paper. I will vote to adopt, as well, the
modified paper, but as a personal note I just wanted
to express my support for the paper as it was
originally conceived.

COMMISSIONER YAKI: Thank you.

CHAIRPERSON CASTRO: Any questions? If not,
then we'll move on to the next topic for discussion
before we entertain motions. Regulatory and Other
Barriers to Entrepreneurship that Impede Business
Startups, proposed by Vice Chair Thernstrom. Madam
Vice Chair?

VICE CHAIR THERNSTROM: Well, I've spoken
previously about what I think is the importance of
this topic. Let me just add a couple of points. One,
it's an opportunity to look at other federal agencies
other than DOJ to look, for instance, at the Small
Business Administration. It's an opportunity to expand
on previous Commission and SAC work in this area.
It's a timely topic in terms of -- in the context of
today's economy. And examining the impact of
regulations on small and startup businesses owned by
disadvantaged groups is really central to addressing
what I think is a serious problem, particularly for
when we look at the state of black America.
There is a paucity of black-owned small businesses, black entrepreneurs in the cities. Everybody will remember when the Los Angeles riots took place that we had the Korean shop owners standing outside of their shops trying to protect them. And in that area where the riot took place there were almost no black businesses. And I just think if you care about the state of black America, particularly black America, because this is a problem that is especially apparent in inner city black communities, if you care about the state of black America, this is a good topic in my view. But I've made that argument before. I'm hoping finally to prevail on it, but hope springs eternal.

CHAIRPERSON CASTRO: I have a question. But you would intend to offer minority business --

VICE CHAIR THERNSTROM: Oh, of course.

Yes, of course.

CHAIRPERSON CASTRO: Adversely impacted.

VICE CHAIR THERNSTROM: Yes. No, of course.

CHAIRPERSON CASTRO: So, this is going to be a -- not focused on any particular state, but it will be national survey, or how --

VICE CHAIR THERNSTROM: Well, you know, I would have to work with the Staff Director on how we
would put this together, but it's the question of what
the picture looks like, and what -- how it might be
addressed, the problem might be addressed would be the
starting point.

CHAIRPERSON CASTRO: Any other questions
for the Vice Chair before we begin to entertain
motions? Any questions?

(No response.)

CHAIRPERSON CASTRO: None? Okay. Does
anyone have any motions on any of the topics that we
have just discussed here in the initial rankings?

COMMISSIONER KIRSANOW: Mr. Chair, Kirsanow
here. I'd move for the topic related to Peaceful
Coexistence, that it be adopted.

CHAIRPERSON CASTRO: Is there a second?

VICE CHAIR THERNSTROM: I will second that.

CHAIRPERSON CASTRO: Okay. Any additional
discussion needed on that?

COMMISSIONER GAZIANO: I just want to add
one very brief --

CHAIRPERSON CASTRO: I'm sorry,
Commissioner Gaziano.

COMMISSIONER GAZIANO: -- point. I agree
with Commissioner Kirsanow's statement that the
Hosanna-Taber decision that came out Wednesday -- so,
as up-to-date as this is, it's not even -- doesn't
even reflect the last 48 hours or so, Supreme -- not
only does not preclude it, but actually makes it more
relevant. The majority opinion, or actually the
unanimous decision by the Chief Justice left open
determinations under the Religious Exception regarding
which people were the ministers. But I don't even
think that issue, as interesting as it is, relates to
most of the non-discrimination provisions in Civil
Rights laws.

It shows, if anything, that a majority or
a unanimous Supreme Court thinks that the First
Amendment has some direct bearing and rejected
arguments by a variety of people, including the
administration that the First Amendment did not have
some impact on the anti-discrimination provision at
issue in that case. But I think we can play an even
more important role in filling in some of the gaps
that the Supreme Court opinion leaves.

CHAIRPERSON CASTRO: Okay, any other
discussion on this motion? Any other comments from
other Commissioners?

(No response.)

CHAIRPERSON CASTRO: If not, we will then
vote on this motion. So, Commissioner Heriot, how do
you vote?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Abstain.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: So, we have -- and I will abstain. So, we have one, two, three, four, five yeses, one no, and two abstentions. So, that is a Concept paper. So, this will be a -- well, we can discuss at the end of this which ones will be 2012 and
The next, we have a motion from Commissioner Yaki.

COMMISSIONER YAKI: Yes, I'd like to move approval of my Evaluating Federal Outreach to Arab and Muslim American Communities Post September 11th.

CHAIRPERSON CASTRO: Second. Okay, so we have a motion on the table for Commissioner Yaki's paper. Any additional discussion or questions beyond what we had earlier?

(No response.)

CHAIRPERSON CASTRO: Hearing none, let us take a vote on that. Let me get my notes here. So, Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: I pass.

CHAIRPERSON CASTRO: Okay, that's a new one. I'll come back to you then. Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: I'll pass until I see
what Gaziano's says.

CHAIRPERSON CASTRO: Are you serious?

(Laughter.)

CHAIRPERSON CASTRO: All right.

Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: I would pass, too.

CHAIRPERSON CASTRO: Okay, well I vote yes.

So, now we'll go back to --

COMMISSIONER GAZIANO: Okay. Well, I will match Commissioner Kirsanow's vote on the last motion, so I abstain.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER GAZIANO: And that's final.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: I will say yes.

CHAIRPERSON CASTRO: Okay. Commissioner Kirsanow is the only on left to vote. Is that right?

I've got my notes here. Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Abstain.

CHAIRPERSON CASTRO: Abstain. So, the motion passes with six votes for yes, two abstentions, and zero nos. Any other motions? Commissioner Kladney?

COMMISSIONER Kladney: I'd like to move to approve my NVRA paper.

CHAIRPERSON CASTRO: Okay. Any discussion, questions?

COMMISSIONER GAZIANO: Would you accept as a friendly amendment that voting on it does not necessarily -- that we'll take a subsequent vote, that this will be put -- a subsequent vote on whether it C-- it won't preclude us from taking a subsequent vote on whether to expand it to include Section 8, as well?

COMMISSIONER KLADNEY: I think I can accept that.

CHAIRPERSON CASTRO: Okay. Any additional discussion or questions? If not, we'll begin to take votes on the NVRA topic. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I'm thinking about this. We're not resolving the Section 8 issue yet.

VICE CHAIR THERNSTROM: Yes. Right.

CHAIRPERSON CASTRO: Correct.
COMMISSIONER HERIOT: I'll pass.

CHAIRPERSON CASTRO: Okay. All right. I'm going to make a new column here that's pass.

(Laughter.)

CHAIRPERSON CASTRO: I'm sorry. Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

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

VICE CHAIR THERNSTROM: I'm taking a pass, too.

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

COMMISSIONER YAKI: Emphatically with absolutely no hesitation whatsoever, yes.

CHAIRPERSON CASTRO: Okay, I thought you were going to abstain.

(Laughter.)

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Okay. Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: And I vote yes.

Commissioner Heriot?

COMMISSIONER HERIOT: I think I'm going to abstain.

CHAIRPERSON CASTRO: Okay. Commissioner --

I'm sorry, Vice Chair Thernstrom?

COMMISSIONER HERIOT: I'm happy to do it with Section 8, though, so that's --

CHAIRPERSON CASTRO: Okay. Madam Vice Chair?

VICE CHAIR THERNSTROM: Well, that's my problem, too. I'm happy to do it with Section 8, as well. So, I'm sorry, we decided that the motion includes --

COMMISSIONER GAZIANO: Keeping open.

CHAIRPERSON CASTRO: No, it doesn't include in the future amending it to add that, but it doesn't add it now.

VICE CHAIR THERNSTROM: All right. I will vote yes for it then.

CHAIRPERSON CASTRO: Okay. So, the motion passes with one, two, three, four, five, six, seven yeses, and one abstention. Any additional motions?

Commissioner Kladney?
COMMISSIONER KLADNEY: I'd like to move to approve my Criminal Sentencing Concept Paper but first I would, in response to Commissioner Heriot's discussion I had earlier prior to the meeting, I'd like to ask the agency director exactly do we have jurisdiction over the administration of justice as the Administration of Justice? I haven't asked her that yet, so I'm just asking that now.

COMMISSIONER GAZIANO: Or the administration of justice as it relates to race --

COMMISSIONER KLADNEY: Yes.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Is that what you're asking?

COMMISSIONER KLADNEY: Right.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Yes.

COMMISSIONER GAZIANO: Gender.

COMMISSIONER KLADNEY: Yes, what?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Yes, we do.

COMMISSIONER KLADNEY: Over --

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Jurisdiction over the administration of justice.

COMMISSIONER KLADNEY: Alone as it stands
by itself, the administration of like crime and
courts, and things like that?

DELEGATED THE AUTHORITY OF THE STAFF
DIRECTOR TOLHURST: Anything, courts, police, any
portion of the justice system.

COMMISSIONER KLASNEY: Well, like
Commissioner Gaziano --

COMMISSIONER HERIOT: I think the issue is,
is that modified by the equal protection issues, the
administration of justice as it relates to equal
protection based on race, gender, dah, dah, dah.

DELEGATED THE AUTHORITY OF THE STAFF
DIRECTOR TOLHURST: Yes, that's right.

COMMISSIONER KLASNEY: Okay.

DELEGATED THE AUTHORITY OF THE STAFF
DIRECTOR TOLHURST: And your paper I think falls well
under that.

COMMISSIONER KLASNEY: Okay.

CHAIRPERSON CASTRO: So --

COMMISSIONER KLASNEY: But does it require
that it relate to race, or national origin, or sex as
the administration of justice, or can it just relate
to the administration of justice, and the courts, and
policing, and things like that? In other words, if the
paper was not so -- didn't have to be focused on
disparate sentencing but just on how justice is being administered in terms of courts, and arrests, and things like that.

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: But you'd be exploring how it relates to race, or are you saying no?

COMMISSIONER KLADNEY: How what?

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: You'd be exploring still how it relates to race, or gender, or what have you?

COMMISSIONER KLADNEY: Yes.

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: I mean --

COMMISSIONER KLADNEY: Right, I mean, is C- - I guess I'm not being clear according to -- the jurisdictional aspect of the paper, one is I put in there, called it disparate sentencing. And then in discussions I've also called it something just regarding the administration of justice in and of itself. Does that give us two independent jurisdictional ways to look at it, or as Commissioner Heriot has described it, does it have to relate to one of our -- the administration of justice as to race, or sex, or age?

DELEGATED THE AUTHORITY OF THE STAFF
DIRECTOR TOLHURST: Well, I rather wish I'd be asked in advance because I don't have your paper in front of me.

COMMISSIONER KLADNEY: Okay, never mind then.

DIRECTOR TOLHURST: Well, no. But let me say, when I think the purpose of this Commission would tend towards Commissioner Heriot's view --

COMMISSIONER KLADNEY: Okay.

DIRECTOR TOLHURST: -- in that, for example, we wouldn't -- you all wouldn't want to examine are court clerks rude to people. I mean, right? We want to examine issues related to civil rights.

COMMISSIONER KLADNEY: Okay, very good then.

DIRECTOR TOLHURST: But if you want me to look at your paper --

COMMISSIONER KLADNEY: We'll talk about that later.

DIRECTOR TOLHURST: -- and give you a more --

COMMISSIONER GAZIANO: Or the legal
authorities themselves if you're not --

COMMISSIONER KLANDNEY: Right. And it's --

COMMISSIONER HERIOT: Yes, just to clarify.

I agree with Commissioner Kladney that the actual
language of the statute is a little loose on this. But I think in the full context of the legislative
history, I think it's clear that Congress was not attempting to give us jurisdiction over the
administration of justice generally, but rather the administration of justice as it relates to equal
protection issues based on race, gender, and the rest of the list.

COMMISSIONER KLANDNEY: Very good then, but
I still make my motion then.

CHAIRPERSON CASTRO: Okay, so we have a motion. Do we have a second to the motion?

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Okay. So, any additional discussion or questions, even questions from Commissioner Kladney to himself about his paper?

(Laughter.)

CHAIRPERSON CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: I suppose I have one for the Chair.

CHAIRPERSON CASTRO: Yes, sir.
COMMISSIONER GAZIANO: And just a statement. Since we have approved three, I didn't know that we were necessarily going to go forward. And my concern as I expressed with Commissioner Kladney individually is that this is such a huge topic that I think that it could benefit from being focused. There are criminologists and criminology departments and universities who can't even agree on the right way to study some of these issues, so I'm not sure I support it in its current form. So, I just wonder whether we should table it for now. But I yield -- I would yield to Commissioner Kladney, as well.

COMMISSIONER KLADNEY: I'd be willing to do that. We did speak about that in terms of the entire concept and broad view of the paper. So, why don't C-- maybe we'll do some more work on that, and I'll withdraw my motion.

CHAIRPERSON CASTRO: So, you're tabling your sentencing?

COMMISSIONER KLADNEY: Yes, but now I'll move on to my -- yes.

VICE CHAIR THERNSTROM: Okay. I was going to make a motion on my entrepreneurship.

CHAIRPERSON CASTRO: Oh, okay.

VICE CHAIR THERNSTROM: Barriers to
entrepreneurship. And I'm -- I've already given my little spiel about why I think this is a good topic, and I've given it in previous meetings. And I would like to have a vote on it once again.

CHAIRPERSON CASTRO: Is there a second on that?

COMMISSIONER: Second.

CHAIRPERSON CASTRO: Okay, any additional discussion?

(No response.)

CHAIRPERSON CASTRO: Hearing none, I will take --

COMMISSIONER HERIOT: I have a question --

CHAIRPERSON CASTRO: I'm sorry, Commissioner, question?

COMMISSIONER HERIOT: -- about how many of these things we can do.

CHAIRPERSON CASTRO: Well, that's -- we can -- we've definitely got space for two additional ones this year, Fiscal Year '12, standard. It's possible that we have --

COMMISSIONER HERIOT: And those would be the two that we've just -- we've adopted.

CHAIRPERSON CASTRO: We've adopted three. It's possible we could do three -- but Commissioner
Kladney indicated he would be wanting to do his NVRA in Fiscal Year '13.

COMMISSIONER Kladney: No, that's quite all right. I mean, if you're going to do four, I can wait on the adoption thing. I have no --

CHAIRPERSON CASTRO: Yes, well -- so, let's talk this through a little bit. It's possible to do a third if it's small, and we have budget. If not, then we would put -- we could put these on a vote for 2013, or table them and vote on them later as part of a 2013--

COMMISSIONER Heriot: If we go with four and we've already got voting rights and human trafficking coming up, are we going to be able to have meetings approving the reports that are going to be up for being approved, or are we going to be listening to briefings and not get around to approving things? I mean, it tends to -- business meetings need to be done, too.

CHAIRPERSON CASTRO: Pardon me?

COMMISSIONER Heriot: We need to have business meetings, as well.

CHAIRPERSON CASTRO: Oh, absolutely. So, we definitely need to do two more in this fiscal year. So, one could argue that we've already got
Commissioner Yaki's, and Peaceful Coexistence, so this could be the two for Fiscal Year '12. Commissioner Kladney's NVRA for 2013. We could just stop right now and say we'll put these off until later, or we could vote and say that this one -- let's say Vice Chair's passes, for example. She has enough votes for it, we could say that's a 2013 topic, or she might want to push for -- we'd have to figure out amongst ourselves.

We can definitely do two more.

COMMISSIONER HERIOT: We can decide six months from now.

CHAIRPERSON CASTRO: Exactly. We could just move this on to the -- put this off and say we've got enough today for the balance of this year, and possibly already beginning of the Fiscal Year '13. And then move the rest on to consideration later as Fiscal '13 topics.

COMMISSIONER HERIOT: Can I be reminded? How many reports have we already had briefings for that we haven't yet turned into reports? What's in the pipeline? We've got Eminent Domain.

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: There's Eminent Domain.

CHAIRPERSON CASTRO: We're finishing up the school discipline. It's already been approved by it
hasn't been published yet. Right?

DELEGATED THE AUTHORITY OF THE STAFF
DIRECTOR TOLHURST: Yes, that's right. And I think that's it. And I just, as a reminder, sometime in late spring we'll be asking you to either identify one of these or select something else for the statutory report topics.

CHAIRPERSON CASTRO: For 2013.

DELEGATED THE AUTHORITY OF THE STAFF
DIRECTOR TOLHURST: So, that should be something you're thinking about.

CHAIRPERSON CASTRO: Yes. Right. And then we could come back and consider some of these at that later time for 2013 statutory topics. So, we could just say today we've got a number of them we've already approved. Commissioner Kladney, then Commissioner Achtenberg.

COMMISSIONER KLADNEY: I would be more than happy to quasi table the NVRA, and we could work on that, and we could vote on Vice Chair Thernstrom's proposal, if that's -- because you want to try and work on it together, and we can put NVRA off until 2013 or something like that. See if we can get it done.

CHAIRPERSON CASTRO: Commissioner
Achtenberg?

COMMISSIONER ACHTENBERG: Mr. Chairman, it seems to me we've discussed these. We've done the preliminary work on them. I have no hesitation to consider another one from the Vice Chair, another one from Commissioner Kladney, another one from Commissioner Kirsanow or what have you. And is there any problem with scheduling some briefings for the Fiscal Year 2013?

CHAIRPERSON CASTRO: No, it's not, but I also don't want to eat up all of 2013's today, because that's still a ways away, and there may be issues that develop between now and then that we might want to cover. I mean, I could see maybe at the most approving a couple for 2013 today, but I wouldn't want to go too much farther than that because I do want to give us some flexibility as to other issues that may come up. So, right now we could say we've got our 2012s, we've already got a 2013 and go from there. So, maybe doing one more 2013. But, again, then we're starting to fill up next year's dance card kind of early.

VICE CHAIR THERNSTROM: What is the motion on the table on the -- on my topic?

CHAIRPERSON CASTRO: Yes. So, any additional discussion on Vice Chair Thernstrom's
topic, Commissioner Gaziano?

COMMISSIONER GAZIANO: I'd like to -- I'll speak on it very briefly, but I'd also have a slight preference not to fill up next year. We don't know what our statutory report is going to be, and that may bump one of these in some way. And there are going to be other issues that are going to come up, so I think that we've done a good job of picking a number of topics.

But on the Vice Chair's proposal, it's an issue I've been involved with that I've supported, but the general issue, I don't think there's a lot of evidence, and the Institute for Justice has done some great work, and I know your association on the board of that institution. It's not a lot of evidence that there's intentional -- that they throw up barriers to entrepreneurship intending to hurt certain racial groups. So, the connection to our jurisdiction is tenuous.

The argument has to be that these barriers to entrepreneurship have a disparate impact unwittingly on certain racial groups. And, again, while the issue is very, very interesting to me, I don't think it's in the central aspect of our jurisdiction. And so that's why I'm not sure that we
-- it would almost require us to study two issues; what are the barriers to entry, and what is the disparate impact, and is that worth the Commission's time when there are other people who should just be focusing on eliminating these barriers to entry. So, that's my two cents.

VICE CHAIR THERNSTROM: Can I just ask the Acting Staff Director --

CHAIRPERSON CASTRO: Sure.

VICE CHAIR THERNSTROM: Do you have anything to say about the Commission's jurisdiction with respect to this topic?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: I don't have that in front of me, but when I read it, I didn't see a jurisdictional problem at all.

COMMISSIONER KIRSANOW: Mr. Chairman?

CHAIRPERSON CASTRO: Yes, Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I think that -- I don't have any problem at this point with the jurisdictional aspect of it, although I respect Commissioner Gaziano's take on this. This is a topic that I think is a good one. I've testified before Congress on it. However, I'm inclined to put on hold
any further votes. We've already got, as you put it, the dance card filled up for this year into 2013 -- the Fiscal Year 2013, and I think maybe we want to provide ourselves with a little bit of latitude and not lock ourselves in so far out; not to say that this topic isn't one that we wouldn't vote on, but we can always revisit this even next week, I'm sorry, next month or the month thereafter.

CHAIRPERSON CASTRO: Madam Vice Chair, and then Commissioner Yaki.

VICE CHAIR THERNSTROM: Well, I would be happy to put this into 2013, but I just want to remind the Commission we have revisited this topic now a number of times, so that I would really -- well, I would very much like to see a vote on it.

CHAIRPERSON CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Yes, thank you very much, Mr. Chair. Based on what we did in the past, if -- the question was never so much how much time do we have, but how much interest is there in doing it. It may be that if this a topic in which there's sufficient interest in doing it, I think that we should approve it, and then as time permits we find the time to do it. There have been occasions when we have wanted to do a briefing on Topic A, but because
of the availability or non-availability of witnesses
we've had to come -- the staff has had to come back to
the Commission and ask to postpone it. Sometimes
we've gotten snowed out and then the people can't come
back so we have to bring in a different topic.

I think that Commissioner Thernstrom's
topic lends itself to the kind of I think ease of
putting together that we should always have, A, in our
back pocket anyway, and B, if there's sufficient
interest, we should approve it and then, hopefully,
find a time to make it happen. So, I think we should
vote.

CHAIRPERSON CASTRO: Okay. Any --

Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: I concur in the
views of Commissioner Yaki.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER KLADNEY: I concur, as well.

CHAIRPERSON CASTRO: Okay. Hearing that
then I will obviously call the question. So,
Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I think I'm going to
vote no on this at this time. I think it's an
interesting topic, and I'd like to study it, but I
don't want to commit the Commission at this point.
CHAIRPERSON CASTRO: Okay. Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No for that reason, and the other. But just to clarify, I don't think that we couldn't find a way to study this within our jurisdiction. It's just kind of a little artificial. It couldn't be our statutory report, for example, but we probably could frame the issue in a way. And if the rest of the Commission wants to fill up the -- you know, so far in advance, I think there are ways to make this at least interesting, whether it's central to our jurisdiction or not.

CHAIRPERSON CASTRO: Okay. Commissioner -- - I'm sorry. Madam Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow,
how do you vote?

COMMISSIONER KIRSANOW: Abstain.

CHAIRPERSON CASTRO: And I vote yes. So, it passes with five votes, two nos, and one abstention. And as the Vice Chair indicated, she'd be willing to if we needed push this off to 2013, and we can assess as we move forward with the two for 2012, which is Peaceful Coexistence and the Anti-Arab Anti-Muslim paper. Those will be 2012s. 2013 will be NVRA, as we've discussed.

And just for the record, I would like to change my Peaceful Coexistence from an abstention to a yes, so that will change. I mean, it doesn't change the outcome, but -- so, then we will put off discussion of the rest of the topics to a later date, and we'll see how 2013 begins to develop.

We'll want some time in the spring -- we'll then begin to -- we'll want to select a 2013 statutory topic so some of these may come back in that context. Does that work for everybody? All right, great. Thank you.

So, the next item on the agenda is Management and Operations.

IV. MANAGEMENT AND OPERATIONS

STAFF DIRECTOR'S REPORT

NEAL R. GROSS
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CHAIRPERSON CASTRO: Ms. Tollhurst?

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: As usual, I've circulated the Staff Director's report detailing the activities of staff in this past month, and am available to take questions.

If you have questions relating to SACs, I want to note for the Regional Program Report, RPCU Chief is actually here, so if you have questions on that, we'd probably take advantage of him being here.

CHAIRPERSON CASTRO: Okay. Mr. Minarik? Please, I think there's a microphone there where you can sit at that table -- at that chair there.

CHIEF OF REGIONAL PROGRAMS' REPORT

MR. MINARIK: Again, from the Staff Director's report you get three parts to the program, chartering. We saw 38 of the 51 SACs are now chartered, and in 90 days you're going to have another seven expiring, and the goal is to be around 80 percent. So, I just draw your attention to that.

CHAIRPERSON CASTRO: And where are we in the pipeline on those that are expiring, do you know?

MR. MINARIK: When you say in the pipeline, Mr. Chairman?

CHAIRPERSON CASTRO: In terms of the process that needs to be taken before it gets to us at
the Commission.

MR. MINARIK: Of the seven I can tell you that RPCU is aware of five plans, 90-day plans to have these expired charters before the Staff Director several weeks before their expiration.

CHAIRPERSON CASTRO: Okay, and as to the other two, is there a plan to get those into --

MR. MINARIK: Not that I know of.

CHAIRPERSON CASTRO: Okay. What -- bear with me here because I'm glad we've got you here now on some of these questions.

What would be the process or the role of the person in your position to make sure that these other two are submitting these 90-day reports to you? Who's responsible for that?

MR. MINARIK: The Staff Director. Well, technically, it's the Regional Director who has the responsibility to get the package to the Staff Director --

CHAIRPERSON CASTRO: Okay.

MR. MINARIK: -- in time so that the charter does not lag inordinarily. So, that falls upon the Regional Directors.

As part of the administrative instructions, they're supposed to submit a plan to
RPCU and OSD saying 90-days out this is what we intend
to do. When RPCU has the plan in place, it's my job
to follow-up with the Regional Directors and see if,
indeed, the plan is going according to schedule. And,
if not, to note that for the Staff Director.

CHAIRPERSON CASTRO: So, is that happening?

MR. MINARIK: Well, the -- I only just
received the five 90-day plans in the last two weeks,
so every one of those plans, the five of them have
said we're going to be doing outreach to January.

CHAIRPERSON CASTRO: Okay.

MR. MINARIK: So, at the end of January I
intend to have a discussion with all those Regional
Directors and say how are we going with their
outreach? Did you reach this level? And are we going
on to Stage 2?

CHAIRPERSON CASTRO: I also note that
there's a couple of SACs that have been
administratively inactive since about 2004.

MR. MINARIK: That's correct, there's three
of those.

CHAIRPERSON CASTRO: Okay. What do we do
about getting those active? And why has it been so
long, do you know?

MR. MINARIK: I don't have any personal
knowledge why it's taken so long. But they are part of the backlog that --

COMMISSIONER HERIOT: Which SACs are we talking about?

CHAIRPERSON CASTRO: In the report that we have. I think one of them is New York.

MR. MINARIK: New York, Delaware, and West Virginia have been on the backlog since -- their charters expired in 2012. 2005 the Commissioners enacted new procedures to charter State Advisory Committees.

State Advisory Committees having been chartered after that change in policy are considered part of the backlog. So, all -- the other 48 have all been chartered at least once. So, those three still have not been chartered under the new rules.

CHAIRPERSON CASTRO: What can we do to get those chartered? I think 2004 is just -- I mean, I could understand some not being re-chartered for a few months just because of the flow, but 2004 seems to me to be unbelievable.

COMMISSIONER GAZIANO: Are you aware of a reason for that? Was it -- for those particular states?

MR. MINARIK: Not for those particular
states, but to defend Regional Program staff, chartering takes a lot of time, Commissioner. And the particular Regional Director in the east has 14 states. I think that might be part and parcel of it. And in addition to doing chartering, the State Advisory Committees they have are active. They want to engage them, and I do know that the Eastern Regional Office is now without administrative support. But I don't know the details about why those particular committees have not gotten to the first threshold.

CHAIRPERSON CASTRO: Could you for the next meeting come to us with some information on that, because eight years seems like an awful long time. And we can at least make sure that someone's got a plan in place to get those on line, particularly for the citizens of those states who would, I'm sure, love to have a SAC in their states.

MR. MINARIK: With the Staff Director's permission I'll reach out to --

CHAIRPERSON CASTRO: Would that be appropriate?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Yes.

CHAIRPERSON CASTRO: Thank you. Any other
questions for Mr. Minarik?

MR. MINARIK: Got two more topics.

CHAIRPERSON CASTRO: Oh, I'm sorry, go right ahead. Thank you.

MR. MINARIK: I did want to tell you that there are -- I don't want to walk you through all the projects that are on, but there are several reports that are coming that are -- the SACs have finished them.

CHAIRPERSON CASTRO: Okay.

MR. MINARIK: And they're about to be released, or have been released. I wanted to tell you about Minnesota, the resources devoted to civil rights enforcement in Nevada, status of civil rights in Nevada is now in OSD. The North Carolina School Discipline report is now in OSD. And in New Jersey, accommodations by the Department of Corrections to inmates with disabilities is under legal sufficiency review. So, those are in the pipeline.

CHAIRPERSON CASTRO: Okay.

MR. MINARIK: Along that line, my advocacy role for Regional Programs, I couldn't help but notice that there's a briefing on human trafficking. I talked to the Commissioner in January. I lamented at that time that there was a briefing by the Commissioners on
school discipline. Three of the State Advisory
Committes in the south had done fact findings on
this. None of the chairs were asked to participate.
The Texas Advisory Committee has recently released a
report on human trafficking. I think the Commissioner
should seek to ask the Chairman of the Committee to be
part of the briefing.

Not only that, I couldn't help but notice
in my advocacy role when you're approving these
reports, we've talked about anti-Muslim activity. I
know the Michigan Advisory Committee has recently done
something on that. Voting Rights, Kentucky and
Florida have recently issued reports. There was one by
Commissioner Kirsanow that you didn't get to on
affirmative action. The Arizona Committee has done
these things. I would just ask that you consider
contacting the regional programs of whether a State
Advisory Committee has done some activity recently.

CHAIRPERSON CASTRO: Oh, absolutely. In
fact, I think at the last meeting I had mentioned that
I had spoken to the Eastern Regional staff about the
human trafficking, and we had suggested that maybe
there's even some way to coordinate the publication of
their reports along with ours.

In addition, I have personally spoken to
the head of the Texas SAC about the report, not necessarily including human trafficking, but talking to him about the report. But that's a point that's well taken.

In terms of the school disciplining briefing, that's something that didn't occur on my watch, but I can assure you it was my first briefing, and I was surprised as well that we didn't integrate that. But I made certain that in my statement that we included the findings of the school discipline reports that had already been published that were public. And as you can see from the other Concept Papers that have been approved earlier this year, for example, immigration, we do contemplate engaging the SACs. The Vice Chair's program that we approved today also contemplates engaging the SACs, so that's something C- those are points well taken. And we would definitely appreciate whatever facilitation you and the Staff Director can provide us in engaging our SACs even more.

MR. MINARIK: That's all I have, Mr. Chairman. Thank you.

CHAIRPERSON CASTRO: Thank you. All right. Any additional questions for Mr. Minarik? Commissioner Gaziano?
COMMISSIONER GAZIANO: I might have one sort of as applied to the Hawaii SAC, but maybe we should -- I could ask that if and when we take up the Hawaii SAC. Will you remain for --

MR. MINARIK: Oh, yes, then I'll change my hats, become Director of the Western Regional Office at that time.

CHAIRPERSON CASTRO: Okay. Any additional questions for Mr. Minarik? If not, it's a nice segue. We're moving on now to the State Advisory Committee issues with the only item on the agenda is the re-chartering of the Hawaii SAC.

V. STATE ADVISORY COMMITTEE ISSUES

RE-CHARTERING OF THE HAWAII SAC

CHAIRPERSON CASTRO: So, I know that there are some questions as they relate to the Chairmanship, but what I will do procedurally is I will go ahead and make the formal motion as it's been submitted, and then if there are any amendments, et cetera, we can deal with those.

I move that the Commission re-charter the Hawaii State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based upon the recommendations of our Staff Director; Amefil Agbayani, Robert Alm, H.

Pursuant to this motion, the Commission appoints Michael Lilly as Chair of this re-chartered Hawaii 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?

COMMISSIONER GAZIANO: Second.

CHAIRPERSON CASTRO: Okay, there's been a motion and it's seconded. Is there discussion? The Chair recognizes Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much, Mr. Chair. I have a question for Mr. Minarik. I understood that the -- we had approved term limiting chairs to two 2-year terms. I understand this would be Mr. Lilly's third 2-year term. Is that correct?

MR. MINARIK: With respect to Staff Director, is this okay if I take these questions?

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Of course.
MR. MINARIK: I report to her. Yes, you understand correctly, Mr. Commissioner.

COMMISSIONER YAKI: Okay. In that case, I would like to amend the Chair to -- I've met Mr. Lilly. I think he is a fine individual, and has given great service to the Commission. I hope that he will keep on, but in keeping with our own regulations, I'd like to nominate instead as Chair Ms. Nalani Fujimori Kaina. She's been on the SAC for some time. She is with legal aid. She's not in any one school of thought in terms of issues, and she's not a single-focus issue person, in other words. She's done a lot of work on the issue of housing, discrimination, other things, women's rights that have a broad view of the jurisdiction that the Committee will be engaging in. And I think that it would be -- she would be a credit to the Hawaii SAC, and I would nominate her as the new Chair.

CHAIRPERSON CASTRO: So, we have a motion to amend. Is there a second to the motion?

COMMISSIONER HERIOT: Second.

CHAIRPERSON CASTRO: Okay. So, any discussion on the motion to amend? The Chair recognizes Commissioner Gaziano, Vice Chair Tbernstrom, and then Commissioner Heriot.
COMMISSIONER GAZIANO: Mine is just a simple question. What is the rule? I understand it's an administrative instruction, Commissioner Yaki. Could you just for the record or for my benefit repeat the rule that --

COMMISSIONER YAKI: Yes. Well, it's actually in two places. One is in a discussion that we had when we amended the SACs early on, but then it was incorporated in recommendations made by --

DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: Lean Six Sigma --

COMMISSIONER YAKI: -- the Lean Six Sigma, yes, process that we engaged in a few years back. I think you had just come on the Commission.

COMMISSIONER GAZIANO: I, unfortunately, missed the whole Lean Six Sigma --

COMMISSIONER YAKI: Fortunately, you missed that? And I have no idea why they call it Lean when it takes so much time. But the suggestion was to keep SACs fresh, that this Commission had imposed term limits on members of the Commission as a whole, I think to, what is it, four 2-year terms, I think, or five? I can't remember which. But in order to ensure that within that group there was a diversity of viewpoints and fresh energy devoted to being Chair,
that it also -- that Chairs were appointed to 2-year terms, as well, be allowed only two 2-year terms. Mr. Lilly has served his second 2-year term.

COMMISSIONER GAZIANO: Thank you for the clarification.

COMMISSIONER HERIOT: I'm still unclear.

COMMISSIONER GAZIANO: Let me just see if I -- just so -- your motion still would be in order, but as I understand your answer, there's no binding AI that would have bound our staff to eliminate him.

COMMISSIONER YAKI: That's not quite -- actually -- may I respond? That's not quite true, because what the Commission did was to formally adopt the incorporation of the suggestions of the Lean Six Sigma project into our AIs. That is actually what binds the review process for briefing and statutory reports now even as we speak.

That was part of their purview, was also to look at the SACs election process and was part of the whole set of recommendations that the Commission at that time adopted wholesale to be incorporated by reference into our AIs.

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: So, I can explain what happened.

COMMISSIONER YAKI: Yes.
DELEGATED THE AUTHORITY OF THE STAFF

DIRECTOR TOLHURST: Previous Staff Director issued a memo which I'm happy to forward to all Commissioners saying that the complete SAC set of revisions approved by this in conjunction with Booz Allen sent a memo to Commissioners saying that this, in fact, was the rule and had been -- and will be the rule. For unknown reasons, the Staff Director did not create an AI to reflect that, but Commissioners received a memo saying that this was the rule coming out of Lean Six Sigma.

CHAIRPERSON CASTRO: And we've operated with other recommendations already on other matters it sounds like, as well. Commissioner Yaki?

COMMISSIONER YAKI: But I'd also say in 2005 when the changes to the SACs were made, quite frankly over my objection, one point that I did bring up at the time was to limit the terms of the Chair to two 2-year terms. That actually was -- I'm pretty sure was accepted at that time, but like with many things that as you saw here, never quite incorporate into an AI. But I believe somewhere in one of the debates, and I just did not have the time to go through 12 months worth of transcripts because this was debated over -- this was what -- debate over some period of time, that my concern was to insure that Chairs would
rotate in a fairly regular manner, as well.

So, we can -- as the Chair said, we have used this rule already. I don't know why we didn't apply this rule to Hawaii. In any case, I think Mr. Lilly has served the Commission well, but I would like to see new blood in there. And I hope Mr. Lilly continues, but I'm convinced that Ms. Fujimori Kaina will, in fact, be a very good and fair Chair for the Hawaii SAC.

CHAIRPERSON CASTRO: Okay. Madam Vice Chair, then Commissioner Heriot. You don't have a question any more? Commissioner Heriot, did your question get answered?

COMMISSIONER HERIOT: Partly, but I'm still sort of baffled by this whole thing. Am I to understand that this was somehow voted upon and we forgot with regard to Hawaii? What's -- what happened here? If this is a rule that we have, why was it not followed in this case, if it indeed is a rule that we have?

CHAIRPERSON CASTRO: Mr. Minarik will have to answer that question. Let's have him come forward, and then --

VICE CHAIR THERNSTROM: Okay.

CHAIRPERSON CASTRO: Okay, you did follow
the rule?

COMMISSIONER GAZIANO: Stay up there because I had a separate --

VICE CHAIR THERNSTROM: Yes. I mean, just to follow-up on Commissioner Heriot's --

MR. MINARIK: Yes, I knew about the -- I did forget, and --

VICE CHAIR THERNSTROM: I see. Okay.

MR. MINARIK: Yes. There are times when I make mistakes, and I've told the Staff Director the erasers on my pencils are well worn. However, there are -- we understand that the Regional Offices, we're allowed to make our recommendations for exceptions to these rules. And I did not do so in the memorandum I sent to the Staff Director, but there have been occasions when I did, and I pointed that out. So, when the Staff Director brought it to my attention, I made a mistake.

VICE CHAIR THERNSTROM: Okay.

CHAIRPERSON CASTRO: Madam Vice Chair, is that --

VICE CHAIR THERNSTROM: That's fine. That answers my question.

CHAIRPERSON CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: I move to amend the
motion or substitute, whichever is more appropriate, that the -- we adopt the slate today or vote on the slate today but that we delegate back to the Staff Director to recommend an appropriate Chair, rather than selecting one ourselves. It seems like in other cases we've -- there have been Commissioners who have objected to our singling out individuals. I would rather this go back to the Staff Director to recommend a different --

DELEGATED THE AUTHORITY OF THE STAFF DIRECTOR TOLHURST: Actually, this name came -- I already had asked Peter anticipating this problem to identify an alternate should you all choose to not go with Mr. Lilly. I'd ask him to recommend an alternate to me, and this is the same name that I received and accepted.

CHAIRPERSON CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: I was just going to --

CHAIRPERSON CASTRO: Okay. So, it looks like that process -- that stuff has taken place.

COMMISSIONER YAKI: On my motion then.

CHAIRPERSON CASTRO: Okay. So, if there's no further questions on the motion to amend, we're going to vote on the motion to amend, which is to substitute Ms. Fujimori for Mr. Lilly as the Chair.
So, I will take a vote. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I pass.

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

COMMISSIONER GAZIANO: I pass at this point.

CHAIRPERSON CASTRO: Madam Vice Chair?

COMMISSIONER HERIOT: Can we take a break for a second?

CHAIRPERSON CASTRO: Sure. Okay, we'll take a five-minute recess.

COMMISSIONER YAKI: Can we just finish the vote?

CHAIRPERSON CASTRO: Oh, wait.

VICE CHAIR THERNSTROM: Yes. I mean, can we finish the vote?

CHAIRPERSON CASTRO: Okay, hold on a second.

VICE CHAIR THERNSTROM: Because you've got two passes, they can come back at that point after we've voted and say they're going to vote in X way.

COMMISSIONER YAKI: Let's see if their passes mean anything.

CHAIRPERSON CASTRO: You know, I've said
yes, so I'll let them take a couple of minutes to talk. Sorry, but I'd rather they have an opportunity to coordinate with themselves.

(Whereupon, the proceedings went off the record at 11:03 a.m., and went back on the record at 11:04 a.m.)

CHAIRPERSON CASTRO: So, we will begin the vote again. We'll start with Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I pass.

CHAIRPERSON CASTRO: Still?

(Laughter.)

CHAIRPERSON CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: I vote no on the basis that I think Commissioners should have been notified of this change and given us a chance to look at the qualifications of various chairmen. And I still don't see a need to select a chairman right now given that we're not going to be approving the person who for two months we thought was going to be the Chairman.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Yaki, how
do you vote?

COMMISSIONER YAKI: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER Kladney: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote? Commissioner Kirsanow, are you there?

(No response.)

COMMISSIONER YAKI: Mission Control to Peter.

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

COMMISSIONER HERIOT: I guess I vote no on the ground that this is something that should have been brought to our attention earlier. It shouldn't have been sprung at this meeting. We ordinarily have rules or at least practices that issues are brought up earlier than this. And if this were a problem, we should have been told about it.

CHAIRPERSON CASTRO: Well, this is where we are appropriately bringing up issues. This is the forum we do it, but I think Commissioner Yaki at the
last meeting did indicate there were problems with the SAC. But, so we -- is Commissioner Kirsanow on the phone? If not, then the motion --

COMMISSIONER KIRSANOW: Yes, I am. I'm sorry.

CHAIRPERSON CASTRO: Okay. How do you vote, Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I'm sorry, I had to take another call. I'm going to have to pass.

CHAIRPERSON CASTRO: Okay, pass or abstain, because you're the last voter?

COMMISSIONER KIRSANOW: I'll abstain.

CHAIRPERSON CASTRO: Okay. So, the motion to amend passes with five votes for yes, two for no, one abstention. So, the motion now reads that pursuant to the motion, the Commission appoints, let me get her full name here, Nalani Fujimori Kaina as Chair of the re-chartered Hawaii SAC.

Are there any other motions with regard to this SAC before we vote? The Chair recognizes Commissioner Yaki.

COMMISSIONER YAKI: Yes, I'd like to sever for separation consideration William Burgess and James Kuroiwa.

CHAIRPERSON CASTRO: So, we have a motion
to sever. My understanding is that's a courtesy motion that does not require a second. Is that correct?

COMMISSIONER YAKI: Yes.

CHAIRPERSON CASTRO: Do you want to say anything about that?

COMMISSIONER YAKI: Yes. I think that with regard to Commissioner Heriot's discussion about procedure, I think that this is going -- these are two nominees who have made -- who have taken certain actions and made certain statements that I will ensure that are passed out to the other members of the Commission. And ask that they be given the opportunity to respond.

In the case of Mr. Kuroiwa, he has made several public statements and written statements. And these are things that he has written himself, not paraphrased by any reporter regarding his opposition to same-sex marriage, any form of domestic partnership, or in fact his opposition to what he defines as the act of homosexuality. There are a number of different states that he's made on that that I think make him possibly unfit to be a member of the Hawaii SAC, especially given that Hawaii has adopted civil unions.

And then with Mr. Burgess, Mr. Burgess has
actually been sanctioned under Rule 11. That was affirmed by the U.S. Court of Appeals for continuing litigation on the Native Hawaiian issue. I have raised my objections to Mr. Burgess from the moment that he was appointed. I think he is a single note member of the Commission that does not provide much in the way of anything other than his continued opposition to recognition for Native Hawaiians, which in and of itself I would understand, but being that he seems to have little to no interest in anything else going on, and in fact has been sanctioned by a court for that action, I think that this needs to go back to Mr. Minarik to communicate to these individuals that the Commission is seeking their -- a response to their actions before we actually can vote on them formally. That is my motion.

CHAIRPERSON CASTRO: Okay. The Chair recognizes Commissioner Gaziano.

COMMISSIONER GAZIANO: I supported Commissioner Yaki's motion last month to suspend, or to delay, table, whatever. The motion was the Hawaii SAC. But I expected to be informed of any particular issues that we would have to consider well before the meeting date. That's been our practice. We try to alert the Staff Director and each other as soon as we
are aware of any issue that might be of concern to fellow Commissioners.

I have a separate concern about the existing balance of this SAC. One of the questions I was going to ask Mr. Minarik, and I'd like to do that at this time. If the rest of the Commission is willing to sever and ask these individuals to -- by the way, usually we ask these -- not always, but when the opportunity presents itself, we ask these individuals privately before the meeting without putting on the record alleged defamatory actions about them. But if we're going to do that at this meeting --

COMMISSIONER YAKI: Point of order. There is nothing alleged defamatory when in fact, one, you have a court opinion. And two, you actually have the things that they have actually published themselves. It's another thing when we've had -- and second of all, that is absolutely wrong.

If you want to go into the Vermont SAC ad nauseam where you brought stuff at the meeting, and as a courtesy we did the exact same procedure that I'm asking for right now, the exact same procedure, Commissioner Gaziano. I said --

COMMISSIONER GAZIANO: Someone hopefully will remind me what we did --
COMMISSIONER YAKI: First of all, it was over the holidays, and I was not going to ask my Special Assistant to kill him or herself at the time to try and dig up a lot of the stuff. I had heard some of the stuff. I did not have anything that would -- that I thought would be concrete enough to bring forward that could be potentially defamatory, number one.

Number two, as we did in Vermont, in Vermont I heard about this just before the meeting, but it was not actually presented until the meeting regarding a statement made by the proposed Chair of the Vermont State Advisory Committee in a newspaper article. It was actually a quotation, and was actually a Letter to the Editor, I believe.

You, at that point, made the comment that it was because he had actually written the letter himself we could consider it, and that we should then ask him -- send it back and ask him to respond, which we did. At the next meeting, the Commission voted not to appoint him to the Commission. That is exactly the same procedure I'm doing right here.

I apologize if I didn't give you a heads up on the actual names of the people. I just wanted to C-- I'm doing this today with copies of papers to you.
And asking for the same procedure, which is to send it back to the Regional Office for a response back from the two individuals involved.

COMMISSIONER GAZIANO: Commissioner Yaki, I did not interrupt your presentation.

COMMISSIONER YAKI: And I --

COMMISSIONER GAZIANO: And I did not appreciate you interrupting me, so please let me continue now that you've had your second piece in the middle of my time.

I don't believe you've accurately characterized how we proceeded under the Vermont situation. I do remember I think we did put off the entire SAC. I do remember that it was a unanimous vote with no abstentions to take off the Vermont SAC, so there was absolutely unanimous agreement in the end regarding the matter that I brought before the Commission.

Now I'd like to ask Mr. Minarik the question that I had raised to sort of further the point that I was going to make. I was a little concerned about the balance of this SAC, and as other Commissioners know, I think what really matters under our previous modifications that it's the ideological balance rather than party registration, as I commented
to others. Both Mary Frances Berry and I were independents but I don't think that necessarily means that Mary Frances Berry and I have the same -- would be described as having the same ideological balance.

There were 14 members on the SAC, one as I understand moved out of state. That was a Conservative member. There were no additional efforts -- or I'm not sure there were no additional efforts, but there's no one else in addition that was recommended to the SAC.

Pursuant to some suggestions made by Staff Director and others, I focused my recommendations, limited them to one or two per SAC. I made two recommendations which you may or may not be aware of.

That's part of what my question is.

Also, pursuant to discussions we've previously had here, my Special Assistant contacted each of them to see if they were willing to -- see if they were contacted would they be willing to serve, and they were both willing to serve. Dr. Tate Zao of the University of Hawaii has a particularly remarkable personal story of being denied education in the cultural revolution in China. Her work since she has come to the United States -- educated at Texas A&M and Princeton University after obtaining first a degree...
after the cultural revolution in China in teaching English has been particularly, I think compelling.

I do not know if these individuals were even contacted, but I'm -- it raises further concerns about maybe it was -- maybe staff looked at them and found something that was disqualifying about them. But I wonder about the procedures that we go through if we don't add a single new member to a SAC.

Are you able to comment on -- you may not want to get into particulars, but on whether you're able to add people to the SAC, how -- and why we didn't in this particular case in Hawaii?

MR. MINARIK: Can I expand just a little bit?

COMMISSIONER GAZIANO: Sure.

MR. MINARIK: When this process started, Staff Director Marcus and I had conversations. And I told the Staff Director as a Regional Director that the SAC packages that would come out at the time for the south were intended to have what I considered to have two strong Conservatives, two strong Liberals, two moderate Conservatives, two moderate Liberals, and several real Independents.

I also told him that I tried to limit the number of SAC members to 11 or 12, because frankly I...
just don't have the resources to support a Committee beyond that. Those were the original packages that I submitted.

After those were submitted, Mr. Commissioner, when I started becoming the Acting Director of the West, I inherited an Advisory Committee that was already put in place, so my modus operandi, quite frankly, was if I have a committee where the returning members have a priority to be reappointed, and I'm already at 12 or 13, and I don't have a Civil Rights analyst sitting in the office, I don't even have a secretary any more in the south, that because of the constraints on me, my practice is that I will send a package forward to the Staff Director that doesn't include new individuals. That's my practice.

Understanding that I don't make the last call, and that I know that the Staff Director does communicate with Commissioners, and if she doesn't like this procedure, she'll let me know. And she has on occasion. She, frankly, has told me she doesn't like the idea that I only send up 11 people. I must send up more than 11.

Mr. Commissioner, that's -- and I don't speak for the other Regional Directors, but that's how
I try to handle it. And I did think in balance that when it played out not only here but in California, that the SACs were reasonably well balanced. And I will also say that why I thought they were reasonably well balanced is because in the south and the west we make real efforts to have unanimous reports. And the Hawaii report that was issued was the first one in a long time that didn't have unanimity, but all of the others. The Nevada report that just got up here, unanimous. Every word that's come out of the Southern Regional Office, and there have been 20 of them, every one of them unanimous, and on difficult subjects, voting rights for ex-felons.

So, I personally am not that concerned. In Arizona, Affirmative Action admissions in public colleges and universities, unanimously adopted. Every one gives in a little bit, and I know I cannot force that, but they all know that's my preference. And that's the best answer I can give, Mr. Commissioner.

COMMISSIONER GAZIANO: I'm glad the Staff Director has informed you of our discussion that we don't want 11, but I think given that there's two, three, whatever, I thought that the consensus of the Commission was that we want a slate much closer to 18. But I think 12 doesn't have very much room, margin for
error either. But based on my concerns that the package even before Commissioner Yaki's motion to sever was somewhat imbalanced, and this would make it much, much more so, and because I think that some of the concerns -- well, I haven't had time, and none of us have had time to really study the matters and the individuals involved as returning members should be able to respond.

I would ask the same consideration that we gave Commissioner Yaki last month, that we postpone vote on the slate, and we consider the slate next month after we've gotten a response back from these returning SAC members.

CHAIRPERSON CASTRO: Commissioner Yaki, what say you?

COMMISSIONER YAKI: I'm of two minds on this. Maybe I'll just pass, but no.

(Laughter.)

VICE CHAIR THERNSTROM: Don't do that.

COMMISSIONER YAKI: In prior years, let's say 2008 and 2009 to be exact, and most of 2010, generally what we have tended to do is to -- especially when here we have what is it, 14 on the -- proposed for the Hawaii SAC?

MR. MINARIK: Thirteen.
COMMISSIONER YAKI: Thirteen. Subtracting two for the severance, and we'll see what happens with those individuals, that leaves some slots available. I think that part of my preference would be simply to see if there are the votes to approve the remainder, deal with the severance issue, and then what is left over we bring back next week, next month with that, and with any other names that Commissioner Gaziano would like to submit, which I will give as due and full consideration as he would give any of mine.

That is sort of my first preference. My second preference would be to simply kick it over again, but I feel now that my own preference would be to approve the Commission as amended without the two names that are severed, and then come back next month with -- because these people are all people who have been there before, have been reappointed, want to be on there. So, I don't see that there -- I don't think there's any consensus to knock anyone off. I think it's an issue of addition rather than subtraction.

So, depending on what happens to the fate of Mr. Kuroiwa and Mr. Burgess next month, and what Commissioner Gaziano brings forward next month, I would rather wait for that to happen, but to approve the amended Commission this month.
CHAIRPERSON CASTRO: The Chair recognizes the Vice Chair.

VICE CHAIR THERNSTROM: I have a question for Mr. Minarik. What's the -- you've talked about 11 is the maximum number, what's the minimum number that we need on a SAC?

MR. MINARIK: Eleven, Madam Vice Chair.

VICE CHAIR THERNSTROM: Eleven is the minimum.

MR. MINARIK: Under the rules and regulations.

VICE CHAIR THERNSTROM: I see. Okay. I misunderstood you on that. Okay.

CHAIRPERSON CASTRO: And what we did say, although we didn't -- there was no consensus that we have 18 members, we did indicate that in a couple of instances recently we had 11-member SACs, members resigned or quit, and that made the SACs inactive, so what we did indicate, and which was communicated to Mr. Minarik is that we wanted more than 11 or 12, just to give us a buffer, but not necessarily to ratchet every one of the SACs up to full capacity because of the budget issues.

Any other questions? If not, then we will
call the question on the vote of the SAC.

COMMISSIONER GAZIANO: I was asking unanimous consent, but if I don't have that, I move to postpone vote on the --

VICE CHAIR THERNSTROM: Well, we've got a motion on the floor.

COMMISSIONER GAZIANO: I move to amend, substitute, or whatever so that we postpone voting on Hawaii SAC until we at least get responses from the two individuals, and perhaps Mr. Minarik has an opportunity to contact the two people that I recommended, which apparently never were contacted.

COMMISSIONER HERIOT: Second.

COMMISSIONER GAZIANO: So that we are able to make a decision on the full SAC at the next meeting.

COMMISSIONER HERIOT: Second.

CHAIRPERSON CASTRO: It's a seconded motion. Commissioner Yaki?

COMMISSIONER YAKI: I would just say that we can -- that can happen in any event. I would prefer we move forward with approving the remainder, and then deal with -- I oppose a motion because I think that we can deal with that issue next month. But I would like to move forward now --
CHAIRPERSON CASTRO: Okay.

COMMISSIONER YAKI: -- with approving the remainder of the SAC with the new Chair.

CHAIRPERSON CASTRO: We'll move forward and then conduct a vote on Commissioner Gaziano's motion to amend, which is to postpone.

Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I vote yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

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

VICE CHAIR THERNSTROM: I don't understand. I thought there was a motion on the floor to sever these two.

CHAIRPERSON CASTRO: Yes, but that motion doesn't need to be voted on. It's a courtesy motion.

COMMISSIONER GAZIANO: Well, I move to substitute --

COMMISSIONER HERIOT: No, this is a motion to substitute.

CHAIRPERSON CASTRO: This is a motion to substitute, which does need to be voted on.

COMMISSIONER YAKI: This motion is a -- in
Robert's Rules this motion is a substitute the main
motion of approving the Committee as amended absent C-
- and that amendment, the Committee has -- the motion
as amended was the new Chair minus the two severed
people. His substitute motion is simply to postpone
the whole thing.

VICE CHAIR THERNSTROM: I vote no.

CHAIRPERSON CASTRO: Commissioner Yaki, how
do you vote?

COMMISSIONER YAKI: No.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

CHAIRPERSON CASTRO: Commissioner Kladney,
how do you vote?

COMMISSIONER KLADNEY: No.

CHAIRPERSON CASTRO: Commissioner Kirsanow,
how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: And I vote no, so the
motion to -- the amended motion fails. So, now we will
move on to a vote on the overall SAC as amended to add
Ms. Fujimori Kaina as Chair, and to sever --

COMMISSIONER YAKI: And the list of names
you read absent the two names I --
CHAIRPERSON CASTRO: Severed, right.

Absent the two names that have been severed. So, Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: No, given that I can't know what the balance of this Committee is going to be. I don't see how I could possibly vote in favor of that.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: No, for the same reason.

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

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLADNEY: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?
COMMISSIONER KIRSANOW: As set forth by Commissioner Heriot, no.

CHAIRPERSON CASTRO: And I vote yes, so the amended SAC passes with the severances being addressed next month. The vote is five in favor, and three against.

VI. ADJOURN

CHAIRPERSON CASTRO: So, there being no other business, I move to adjourn the meeting. Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRPERSON CASTRO: All those in favor say aye.

(Chorus of ayes.)

CHAIRPERSON CASTRO: It is now 11:29 Eastern Time, and the meeting is adjourned.

(Whereupon, the proceedings went off the record at 11:26 a.m.)