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The Commission convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C., at 9:30 a.m., Martin R. Castro, Chairperson, presiding.

PRESENT:

MARTIN R. CASTRO, Chairperson
ABIGAIL THERNSTROM, Vice Chairperson
ROBERTA ACHTENBERG, Commissioner
TODD F. GAZIANO, Commissioner
GAIL L. HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner (via telephone)
DAVID Kladney, Commissioner
MICHAEL YAKI, Commissioner

KIMBERLY TOLHURST, Delegated the Authority of the Staff Director

STAFF PRESENT:

CHRISTOPHER BYRNES, Senior Attorney-Advisor to the Office of the Staff Director
PAMELA A. DUNSTON, Chief, ASCD
LATRICE FOSHEE
TINALOUISE MARTIN, Director, OM
TORRANCE MONTGOMERY
LENORE OSTROWSKY, Acting Chief, PAU
MICHELE RAMEY
JOHN RATCLIFFE, Chief, Budget
DAVID SNYDER
VANESSA WILLIAMSON
AUDREY WRIGHT

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1323 RHODE ISLAND AVE., N.W.
(202) 234-4433
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www.nealrgross.com
COMMISSIONER ASSISTANTS PRESENT:

NICHOLAS COLTEN
ALEC DEULL (via telephone)
TIM FAY
DOMINIQUE LUDVIGSON
JOHN MARTIN
MARLENE SALLO
ALISON SOMIN
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CHAIRPERSON CASTRO: The meeting will come to order. This is a meeting of the U.S. Commission on Civil Rights. It is now 9:31 a.m. Eastern Time, on October 21st.

This meeting is taking place at the Commission's headquarters at 624 9th Street, Northwest, in Washington, D.C.

I am Chairman Marty Castro. Commissioners who are present are myself, Vice Chair Thernstrom, Commissioner Heriot, Commissioner Gaziano, Commissioner Kladney, Commissioner Achtenberg, Commissioner Yaki, and, by phone, Commissioner Kirsanow. Is that right, Commissioner Kirsanow? Are you on the phone?

COMMISSIONER KIRSANOW: I am.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER KIRSANOW: Actually, I am a little bit adjacent to the phone.

(Laughter.)

CHAIRPERSON CASTRO: Okay. That was very funny.

(Laughter.)

I didn't realize Klingons had such a great
sense of humor.

(Laughter.)

A quorum of the Commission is present. Is the person delegated the authority of Staff Director present? Is the Court Reporter present?

THE COURT REPORTER: Yes.

CHAIRPERSON CASTRO: Okay. The meeting shall now come to order.

I. APPROVAL OF AGENDA

CHAIRPERSON CASTRO: The first item is the approval of the agenda. Is there a second?

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Okay. Do we have any amendments, proposed amendments to the agenda?

(No response.)

Seeing none, we have a motion to approve the agenda that has been seconded. Do I have a -- all those in favor of support of that say aye.

(Chorus of ayes.)

All those against?

(No response.)

Any abstentions?

(No response.)

Okay. It passes unanimously.

II. APPROVAL OF THE SEPTEMBER 9, 2011,
MEETING MINUTES

CHAIRPERSON CASTRO: Next on the item is the approval of the September 9th meeting minutes. Is there a motion, or is there a second on that motion?

COMMISSIONER KLADNEY: I second.

CHAIRPERSON CASTRO: Okay. Any discussion? Any proposed changes?

(No response.)

Okay. If not, all those in favor of approving the minutes of the September 9th meeting say aye.

(Chorus of ayes.)

Any opposed?

(No response.)

Any abstentions?

(No response.)

Okay.

COMMISSIONER HERIOT: I abstained on the ground that I can't remember whether my Special Assistant told me to vote yes or no.

CHAIRPERSON CASTRO: Okay. She's not here to tell you?

COMMISSIONER HERIOT: Not here.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER HERIOT: I think she said to
vote yes, so that's the abstention that was close to a yes.

CHAIRPERSON CASTRO: Okay. That's good enough. If you need to change your vote, let us know. Would not want you to get in trouble on anything.

(Laughter.)

VICE CHAIR THERNSTROM: We wouldn't want you to take any risky moves either.

III. STATEMENT ON THE PASSING OF

REV. SHUTTLESWORTH AND PROFESSOR DERRICK BELL

CHAIRPERSON CASTRO: Before we get into the body of the meeting, I just want to make a statement on the passing of two civil rights leaders, Reverend Shuttlesworth and Professor Derrick Bell. The civil rights community suffered two losses this month by the passing of those two great men.

Reverend Shuttlesworth passed away on October 5th at the age of 89. He was an outspoken and courageous leader in the civil rights movement who survived beatings, dozens of arrests, and bombings. His courage often placed him in harm's way, yet he consistently strove to end segregation through non-violent means. He was often at the forefront of major milestones in the civil rights movement.

He was admired by Reverend Martin Luther
King, who referred to him as one of the courageous freedom fighters. His desire to achieve equality for all people will never be forgotten and remains rooted in the work we do here at the U.S. Commission on Civil Rights.

Professor Derrick Bell was a legal scholar who sought to expose racism through his books and articles. He passed away on October 6, 2011, at the age of 80. Professor Bell was the first tenured black professor at Harvard Law School, and also the first black dean at the University of Oregon School of Law.

He was a man of strong convictions. Indeed, his scholarly writings -- Professor Bell really adapted a narrative technique that provided women, Latinos, and gay scholars a new way of introducing their experiences into the legal discourse.

He was the father of the formation of illegal critical race theory and wrote a book entitled Race, Racism, and American Law -- a book that is still used by many law schools today. Through his writings and lectures, Professor Bell taught his students about confronting authority and standing up for the principles that you have in a very non-violent manner.

Both men will be missed greatly, but their
legacy will live on.

IV. PROGRAM PLANNING UPDATE

AND DISCUSSION OF PROJECTS

CHAIRPERSON CASTRO: We now move on to the program planning, a report from our Acting Staff Director.

ACTING STAFF DIRECTOR TOLHURST: Actually, it's the approval of school --

CHAIRPERSON CASTRO: Oh, I apologize for that. So as you know, we have the school discipline report up. We are only going to take a look at Part A this time. We have findings and recs that we will take a look at at the November meeting.

There were some Democratic findings and recs on this that we also want to tighten up as well, but today we are only going to vote on the body of the report for Part A. So I move that Part A of the report be approved. Do we have a second?

VICE CHAIR THERNSTROM: Second.

CHAIRPERSON CASTRO: Is there any discussion?

(No response.)

Hearing none, I will call the question. Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.
CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Just a clarification.

CHAIRPERSON CASTRO: Sure.

COMMISSIONER GAZIANO: This is as corrected by the Staff Director in her message earlier this week?

CHAIRPERSON CASTRO: Yes.

COMMISSIONER GAZIANO: Okay. Yes.

CHAIRPERSON CASTRO: With those changes. 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: And I also vote to approve, so the motion passes unanimously. As I said, we will bring up findings and recs. Do we have a date by which we want folks to circulate those, Madam Staff Director?

ACTING STAFF DIRECTOR TOLHURST: Two weeks before the November meeting.

CHAIRPERSON CASTRO: Okay. So whatever the -- what is that date, do we have a date on that? So we will send the exact date around, but it will be two weeks before the November meeting. And as I said, we will probably tighten up some of the Democratic findings and recs as well, and we will send those around.

I do want to let folks know that I would like to bring up at the next meeting a discussion on either a page limitation or a word count limitation on statements, dissents, and rebuttals. I think, you know, looking at the last report we had a whole lot of additional information beyond the report, and I certainly want to make sure we all still have the right to have our statements and rebuttals and surrebuttals, but I think we also should provide some regulation in the length of those rebuttals and surrebuttals.
So I would be pleased to have, you know, some compromise ideas circulated among the Commissioners before the next meeting, and at the next meeting have a proposal that we could discuss on that topic. Also --

VICE CHAIR THERNSTROM: Are you going to make a concrete proposal?

CHAIRPERSON CASTRO: I would plan to, but I would like to get input from the other Commissioners before I would put forward something, to see if we can find, you know, some common ground on that. If not, we will put something forward that the Commission can discuss as a whole and vote on, up or down, as they see fit.

COMMISSIONER GAZIANO: Since we don't have much of an opportunity to talk collectively to each other, I just want to say, certainly, we are always open to a discussion, but I think that it is a serious concern if you are just talking about word length. There are certain, you know, discussions about incorporating attachments, which we can clarify --

CHAIRPERSON CASTRO: Absolutely.

COMMISSIONER GAZIANO: -- appropriate, but just a word length I --

CHAIRPERSON CASTRO: Well, that's why I
said page count or word length. I'm not sure --

COMMISSIONER GAZIANO: Well, either.

Anything that --

COMMISSIONER HERIOT: Yes, this will be a serious issue.

CHAIRPERSON CASTRO: Well, and that's why I'm letting you know now that we are going to bring it up in November as opposed to just sort of surprising you with it. Okay?

COMMISSIONER GAZIANO: That part is good.

But the thrust of the length is a serious concern.

CHAIRPERSON CASTRO: And we will discuss it. I just want you to know that that's -- as we are looking at the school discipline report, once we approve some findings and recs, I want to have some halfway on -- in my view, a need for some limitation on the addenda that we are going to attach. But we will discuss it.

VICE CHAIR THERNSTROM: So you are going to give us as well two weeks to think about what you propose?

CHAIRPERSON CASTRO: Sure, absolutely, in advance of the November meeting.

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Yes.
VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: If folks have -- exactly -- a proposal they want to take a look at, whatever it is that we propose, we will send out in advance of the meeting. I won't come to a meeting and say, "Here is what I'm proposing" and show it to you for the first time. Absolutely not. It will be circulated before. If we can't come up with something that we all agree on, then I will certainly send something that I think would be -- maybe like a 9-9-9 plan or something.

(Laughter.)

VICE CHAIR THERNSTROM: Nine days to come up with nine --

(Laughter.)

CHAIRPERSON CASTRO: We can discuss that.

VICE CHAIR THERNSTROM: I'm for the nine words.

CHAIRPERSON CASTRO: You know, it's the idea of just some sort of a regulation on the addenda, so that it doesn't end up outweighing the actual report.

I also want to remind you we were going to take up, I think at the September meeting, the additional concept papers we did, and so at the
November meeting we will bring up the concept papers. We already approved two for the fiscal year '12, as you know, voting rights, as their statutory and sex trafficking, as a form of gender discrimination.

We had some from the fellow Commissioners who had raised their ideas. And also, I have revised and will circulate my immigration paper, and I know Commissioner Yaki has something. So we will have those circulated two weeks before the next meeting, so that we can have them discussed at the November meeting.

Now we move on.

COMMISSIONER KLANDNEY: Which concept papers, just your two?

CHAIRPERSON CASTRO: Yes. Well, we already have some concept papers that our colleagues had circulated before that we put off a vote on. This might have been before you guys --

COMMISSIONER ACHTENBERG: Maybe they should be recirculated.

CHAIRPERSON CASTRO: They will be -- we will recirculate those as well.

COMMISSIONER GAZIANO: I suppose if someone wants to update/amend --

CHAIRPERSON CASTRO: Absolutely.
COMMISSIONER GAZIANO: -- that's fine.

CHAIRPERSON CASTRO: Absolutely.

Absolutely.

COMMISSIONER Kladney: So is someone going to send those to me?

CHAIRPERSON CASTRO: Yes, they will be circulated to all Commissioners in advance of the next meeting.

Now we move on to the approval of the scope of discovery plan for the VRA report. Commissioner -- I mean, Acting Staff Director Tolhurst?

ACTING STAFF DIRECTOR TOLHURST: Sure. I just -- and I sent something out yesterday via email on this. At the previous meeting and improving the discovery plan, the Commissioners instructed OGC to add a line stating that, in addition to DOJ, we would seek discovery from a sampling of covered jurisdictions.

That was left somewhat vague, and so as we are now doing the research into the jurisdictions and starting to think about what our discovery will look like, I wanted to have a conversation clarifying now exactly sort of how many states, what sort of depths, so that expectations are aligned before we start,
rather than having people be disappointed when they see where we're gone.

So I put forth a proposal to start the conversation last night about what we might do considering our capacity, and what makes sense for following the concept paper. One proposal I had was that we seek discovery from the nine states that are fully covered by Section 5. A hitch in that is that some of them, probably Mississippi and Virginia, will not file and/or will not file in time for this paper.

So another -- an alternative would be that we look at those states and also the partially covered states.

COMMISSIONER HERIOT: Kim, can I interrupt for just a minute? How do we know that Virginia and the other state you mentioned -- Mississippi --

ACTING STAFF DIRECTOR TOLHURST: Mississippi -- well, Mississippi, we were meeting with the Senator yesterday, and they told us that they have reached an impasse in their state, and are going to put it off for a year. In Virginia, it's a divided legislature politically. They can't get it together. And so I think they are going to ask a federal judge to help them draw their lines, rather than -- which they are just now starting.
COMMISSIONER HERIOT: How do we know that?

Is that something you heard from --

ACTING STAFF DIRECTOR TOLHURST: It's from Research.

COMMISSIONER HERIOT: Okay.

ACTING STAFF DIRECTOR TOLHURST: You can Google it and find it.

CHAIRPERSON CASTRO: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: I do not think that because they have not got a package upon which the state has already agreed that we have nothing to say about Virginia and Mississippi. There may be an extremely interesting story there about what the conflicts are, what you know, what exactly the different maps that have been proposed look like, and what the objections are.

And so I don't think we should write off those two states --

ACTING STAFF DIRECTOR TOLHURST: Oh, no, I don't think --

VICE CHAIR THERNSTROM: -- simply because they don't have finished products.

ACTING STAFF DIRECTOR TOLHURST: I agree.

I'm suggesting, though, if there end up being a
number of states that haven't filed by the time we need to issue discovery, we might want to expand to some of the partially covered states who have filed, just to make sure we are getting more information.

CHAIRPERSON CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: Yes, I was going to make a similar point to what Vice Chair Thernstrom made. It may be more interesting if -- to find out the states that couldn't agree early.

Now, when you're proposing interrogatories -- and that was another I think issue -- I do think we should just proceed as normal civil litigants do. It's even more important for this agency just to proceed through interrogatories. If there is an interrogatory or two that they have to pass on, then they can supplement their response later.

It is also the case, I suppose, that as long as we in the Commission, and you in the staff, are receiving the great majority of responses in a timely manner, it probably wouldn't hurt us if some come in in January or February or supplemented or changed. We want this to be workable.

As far as the partially covered jurisdiction, I don't know whether the practice is actually required by law, but my understanding of the
practice is is that states that are partially covered
still have to submit to -- for approval, but that the
DOJ and/or the relevant court can only object to the
effect on the covered jurisdiction. That might be
interesting, too.

So I think that might be an additional
reason to actually include some of the partially
covered jurisdiction. Effectively, the approving
entity, whether DOJ or the court, can effect the rest
of the state if you are -- especially if you are
talking about a congressional delegation, by objecting
to the districts that are -- that include some of the
covered jurisdictions. So --

ACTING STAFF DIRECTOR TOLHURST: So I
think as a capacity matter, we were hoping to select
10 states. So the question could be: would you like
us to do a mix of fully covered, partially covered,
and then states that didn't file? How would you like
us to select those states?

VICE CHAIR THERNSTROM: The answer so
depends on what --

ACTING STAFF DIRECTOR TOLHURST: Well,
what happened.

VICE CHAIR THERNSTROM: Yes. You are
likely -- what the story is in these individual
states, having some hint of the richness of the material that you are likely to end up with.

And by the way, just as a kind of postscript to what Commissioner Gaziano was saying, these states have every incentive to work fast. These -- I mean, Virginia and Mississippi can't hold elections with it until they have got maps that have been pre-cleared. So I don't expect them to drag this out forever.

CHAIRPERSON CASTRO: Commissioner Kladney?

COMMISSIONER KLANDNEY: I don't know.

Nevada is not a covered state where I'm from, but we have a very interesting thing where Congress --

VICE CHAIR THERNSTROM: Yes, you do.

COMMISSIONER KLANDNEY: -- the legislature didn't meet, and so they brought it to court. The District Judge who is hearing the case is the son of a former Republican governor, and he is a very fair fellow. And he set up three masters to draft maps, and they're in the process of doing that, and people are running for Congress without districts.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER KLANDNEY: So --

VICE CHAIR THERNSTROM: That's exactly -- the chair that we're sitting in there, this happens.
That's exactly why this is not going to be dragged out forever. And then, the -- I mean, the Nevada story is extremely interesting. I have been following it a bit. But, unfortunately, it's Section 2, not Section 5.

CHAIRPERSON CASTRO: Commissioner Heriot?

COMMISSIONER HERIOT: I just wanted to comment on the issue of interrogatories versus more informal methods of getting information. And I would think, just as standard practice for these enforcement reports, we should always go for the more formal, because we've got a deadline for this report. So we can't pussyfoot around. As it turns out, we get lack of cooperation. We've got to be, you know, ready to push hard. And it's much easier to do that if we have used the more formal methods.

I think sometimes we may have briefing reports where we are not on any particularly tight schedule, and we think that it might be easier on everybody to use more informal methods. But I think we should err on the side of formality when we are talking about an enforcement report.

COMMISSIONER GAZIANO: It's also the case if we're -- if we're sending them to private parties, we might want to be more informal. A government
entity ought to be responsive to the Commission on Civil Rights.

COMMISSIONER HERIOT: And they -- I don't think they are going to take offense. And if they do, that's too bad.

COMMISSIONER KLADNEY: Will we be also -- do we need a request for production of documents?

ACTING STAFF DIRECTOR TOLHURST: Yes. I don't -- I think most of the documents are going to be public in this situation, but we will certainly ask for those that are not available publicly. So we still need an answer on how we are going to identify the states, and then I had a secondary question of, once we have a set of states, what I would call the depth of where we are going. So I proposed we would go to this congressional, and then the house and Senate, for the states.

CHAIRPERSON CASTRO: States. Vice Chair, and then Commissioner Gaziano.

VICE CHAIR THERNSTROM: I would start with the covered states. I think that's the place to start, and then let's -- you know, let's put one foot in front of another here. Then, maybe we need to go to the partially covered states in order to have a report that is interesting. And, indeed, I think this
report may get some attention, and really bring to the public and to the political community information they don't have.

CHAIRPERSON CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: The only thing I would add is -- Vice Chair Thernstrom can tell me whether all of these states are fully covered or partially covered. I would want some partially covered, but I would also look at the states where there has been a lot of litigation, particularly Supreme Court litigation in the past.

There is probably going to be for various reasons. And those states, from my recollection, are Georgia, North Carolina, Texas. Those are the main three. Other --

VICE CHAIR THERNSTROM: That's right.

COMMISSIONER GAZIANO: And then, I would want to include, what are some of the partially covered states?

ACTING STAFF DIRECTOR TOLHURST: North Carolina is one of the partially covered. That's the one that actually --

COMMISSIONER GAZIANO: And Georgia is fully covered, isn't it?

ACTING STAFF DIRECTOR TOLHURST: I think
we might want to include the partially covered.

COMMISSIONER GAZIANO: Is Georgia fully covered? Georgia probably is --

ACTING STAFF DIRECTOR TOLHURST: Yes, after Texas.

COMMISSIONER GAZIANO: Yes.

VICE CHAIR THERNSTROM: Now, this list -- but a story in Florida right now by the districting, that's partially covered. You know, whatever.

COMMISSIONER HERIOT: Kim, how many fully covered states are there?

ACTING STAFF DIRECTOR TOLHURST: Nine.

CHAIRPERSON CASTRO: So do you have a specific motion, just to --

ACTING STAFF DIRECTOR TOLHURST: No. I just --

CHAIRPERSON CASTRO: Do we need a motion on this or is this --

ACTING STAFF DIRECTOR TOLHURST: We need something. It could be a motion or it could be just an understanding. We need to have the states identified, so that we can start doing the background research to issue really intelligent discovery.

CHAIRPERSON CASTRO: Commissioner Achtenberg, and then Commissioner Kladney, please.
COMMISSIONER ACHTENBERG: Well, on the issue of the depth, is there any -- I am at least tentatively supportive of the notion that it should be as Ms. Tolhurst recommended. Is there any resistance to that? And, if so, what's the nature of the resistance?

COMMISSIONER Kladney: Well, I understood Ms. Tolhurst to talk about covered states, and then I heard Commissioner Gaziano talk about he wants partially covered states. And then, I heard three states. So --

COMMISSIONER GAZIANO: Well, no. I was just saying that they should -- if we are limiting to 10, I just sort of -- I'm not sure that it magically has to be 10, whether it's 11. I'm just saying of the 10 or 11.

CHAIRPERSON CASTRO: Vice Chair, and then Commissioner Heriot.

VICE CHAIR THERNSTROM: Let us start with the covered states, and I think Commissioner Gaziano is absolutely right in pointing out that North Carolina has had a lot of litigation. So we are going to take -- maybe we want to add North Carolina. It is only partially covered, but, nevertheless, it is worth looking at.
COMMISSIONER HERIOT: What about Texas?

Is that full or --

VICE CHAIR THERNSTROM: It's fully covered.

CHAIRPERSON CASTRO: Why don't you read the fully covered states out for us, please?

ACTING STAFF DIRECTOR TOLHURST: Alabama, Alaska, Arizona, Georgia, Louisiana, Mississippi, South Carolina, Texas, and Virginia.

CHAIRPERSON CASTRO: And so we have plus North Carolina?

COMMISSIONER HERIOT: Do we want a motion?

I'm happy to make a motion?

CHAIRPERSON CASTRO: Yes.

VICE CHAIR THERNSTROM: Yes.

COMMISSIONER HERIOT: I move that we direct the Staff Director, the Acting Staff Director, to look into all of the fully covered states, plus North Carolina. Is that --

CHAIRPERSON CASTRO: Is there a second on that?

VICE CHAIR THERNSTROM: Yes, I second that.

CHAIRPERSON CASTRO: Okay. Any further discussion?
Okay. On that motion, we have a motion and a second. Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Kladney, how do you vote?

COMMISSIONER KLANDNEY: Yes.

CHAIRPERSON CASTRO: And I vote in favor, so it is unanimous.

ACTING STAFF DIRECTOR TOLHURST: And then, Commissioner Achtenberg had raised a question about my
proposal as to going to the congressional and state
house and senate. And I --

CHAIRPERSON CASTRO: Okay.

ACTING STAFF DIRECTOR TOLHURST: -- I
don't know if people disagreed or if you want to have
a discussion on that.

CHAIRPERSON CASTRO: Why don't we make a
motion to that effect.

COMMISSIONER ACHTENBERG: Yes, I'll move
that.

CHAIRPERSON CASTRO: Is there a second to
that motion?

COMMISSIONER HERIOT: Second.

CHAIRPERSON CASTRO: Okay.

VICE CHAIR THERNSTROM: I'm sorry. What
is the motion?

COMMISSIONER GAZIANO: Could you explain
the motion?

CHAIRPERSON CASTRO: That the depth of it
will be congressional, and then state senate and state
house.

VICE CHAIR THERNSTROM: Well, let's do
congressional first and see what we've got, before we
go to the state senate and state house. I don't know.
I'm going to trust Kim here. I've seen what she's
got and what the -- how robust the information is.

CHAIRPERSON CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: We can decide I suppose if the data is inadequate that we are not going to try to deal with it. But I think if we do rounds of discovery we are unlikely to -- then we might -- we might actually get some very interesting and -- from many or most of the states. So I would suggest we just ask for it.

VICE CHAIR THERNSTROM: Okay.

CHAIRPERSON CASTRO: So we have a motion --

COMMISSIONER HERIOT: There's a motion on the floor. It has been seconded.

CHAIRPERSON CASTRO: Yes, a motion, seconded. All those in favor of making the depth that of congressional, and state senate, and state house, I'll take a roll call vote. Commissioner -- sorry, Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?
COMMISSIONER HERIOT: Yes.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: 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 KLADENEY: Yes.

CHAIRPERSON CASTRO: And I vote in favor.

It is unanimous.

V. MANAGEMENT AND OPERATIONS

CHAIRPERSON CASTRO: Okay. We will now move on to the management and operations report, Staff Director's report in particular.

ACTING STAFF DIRECTOR TOLHURST: As usual, I am not going to read to you this report of activities, but I will answer any questions that you have. The other, you know, main issue we have been reporting on is the budget, and there is no new news in terms of any new developments for our 2012 or 2013
budgets, while I know many of you have been speaking to people on the Hill about that.

CHAIRPERSON CASTRO: It'll probably be resolved, as we thought, in conference, so -- I know there has been bipartisan outreach to educate legislators about it, and I think there is some receptivity to work with us. But it is all going to be driven by what the conference number is, so --

VICE CHAIR THERNSTROM: I would just like to commend those who have -- and I know a number of people here have been working to try to bring our case before members of Congress, both Democratic and Republican, and both the House and the Senate. You know, it's very -- it's new and it's heartening to see us really fighting for ourselves here. So I wanted to thank those who have been working.

CHAIRPERSON CASTRO: I echo that, and I appreciate everyone's efforts. So thank you.

A date here -- I was handed a note that the two-week period before the November 18th meeting is November 4th for the findings and recommendations to be due. And they will be sent to our Acting Staff Director. She will circulate those, along with any revisions to the concept papers. So November 4th.

Commissioner Gaziano?
COMMISSIONER GAZIANO: It's education, Vice Chair.

CHAIRPERSON CASTRO: That's right.

COMMISSIONER GAZIANO: Education. You didn't use an improper word, but someone would -- never mind.

VICE CHAIR THERNSTROM: Oh, I'm sorry. The sentence I was supposed to say was "to educate the people on the Hill."

COMMISSIONER GAZIANO: The Staff Director -- Madam Acting Person with Authority --

(Laughter.)

-- for all --

COMMISSIONER YAKI: Grand Poobah.

(Laughter.)

COMMISSIONER GAZIANO: On the one-page budget information, I am glad to receive it, but I would like to get your and some of the other Commissioners' input on whether we could get a little bit more detail.

Maybe I just didn't read it -- part of it is I maybe didn't read it clear enough, but I also think that if this doesn't show, for example, month-to-month expenditures that we can follow, I am not sure it also has the level of detail that I would
like. I mean, it raises some questions.

You know, there are some interesting, you know -- the one that says financial statement audit library service, temporary employment services, at $222,000, $150-, headquarters, $30,000, you know, of that $222,000, which is for financial statement audit?

ACTING STAFF DIRECTOR TOLHURST: Right.

COMMISSIONER GAZIANO: Which is for library services? Which is for temporary?

We, by the way, may agree and think it's all wonderful. When it's broken down, we may come up with some other idea about hiring a different auditing firm if they're -- you know, or at least we could pose questions. You know, how many hours of work is that, and --

ACTING STAFF DIRECTOR TOLHURST: Sure. I understand.

COMMISSIONER GAZIANO: -- what does it obtain? I don't know -- how hard is it -- I assume you have month by month ledgers?

ACTING STAFF DIRECTOR TOLHURST: I get a monthly report. So part of sending this out was, I mean, at one time Commissioners only got something that looks like this, which is horribly not detailed.

So --
COMMISSIONER GAZIANO: Agreed.

ACTING STAFF DIRECTOR TOLHURST: -- we have ramped it up to this. We can give out more. I receive something that is incredibly detailed, and somewhat misleading. It is never the correct numbers, so I am little --

CHAIRPERSON CASTRO: Explain how it is --

COMMISSIONER GAZIANO: I am sort of used to the ledgers that are behind, and I get -- or I've gotten used to them, and I know a little bit how to read them. So you can educate us on --

ACTING STAFF DIRECTOR TOLHURST: Well, for example, and particularly this month it was difficult, and it -- starting next month, now that we are in a new fiscal year, it will be a little easier, because the budget folks that would prepare this for us were very busy closing out the year, for example, Commissioners' timesheets who came in at the very end.

COMMISSIONER GAZIANO: Guilty.

ACTING STAFF DIRECTOR TOLHURST: And so those affect the budget, and so the number here, when I say it's misleading, sometimes those numbers are wrong, because two weeks later we get the bill for three Commissioners' time. And so you will see this and it looks like a small number when it is really
double that. So it's depending on the timing of when
things like that come in.

But so, you know, we can create an actual
-- budgeted versus actual, which I think might -- you
might prefer to see. I can tell you -- yes. I mean,
why don't I make a hybrid even further between what
was sent out but getting closer to this really
detailed one and see what you think next month. If
that's still not enough detail, we can talk again.

COMMISSIONER GAZIANO: I think that that
process sounds fine. Other Commissioners?

CHAIRPERSON CASTRO: Commissioner Kladney?

COMMISSIONER KLADNEY: Are you going to
send -- can you send the detailed one, too, so that
then we can see exactly what it looks like, and
then --

ACTING STAFF DIRECTOR TOLHURST: Sure.

COMMISSIONER KLADNEY: -- and then maybe
decide off of that which items we want to break out?

ACTING STAFF DIRECTOR TOLHURST: Yes, I
can do that.

COMMISSIONER KLADNEY: Just as an idea.

ACTING STAFF DIRECTOR TOLHURST: I can do
that. I can tell you for the end of this year I know
people -- some years hundreds of --
CHAIRPERSON CASTRO: Fiscal year '11?

ACTING STAFF DIRECTOR TOLHURST: Yes.

Hundreds of thousands of dollars are left and/or there is some kind of spending spree. This year -- and this is always money left. There is often a cushion left in the five digits. Because we -- because of late-coming bills, we always have to leave a cushion, so that we don't become anti-deficient.

This year the remainder was $64,000, which was .7 percent of our obligated budget. So we spent 99.3 percent of our budget.

COMMISSIONER GAZIANO: And because of the move, were you able to, you know, in the last hour commit back to some --

ACTING STAFF DIRECTOR TOLHURST: We did whatever we could, yes.

CHAIRPERSON CASTRO: Vice Chair Ternstrom?

VICE CHAIR THERNSTROM: Well, now these are obligations, and they are -- let's just say as a preliminary matter I know zilch about budgets. But in any case, on a day it seems to me, in thinking over the long run -- and this is really a question -- you know, don't we have to think about this whole question in the context of a discussion of what the Commission
priorities are going to be? And, I mean, we've got staff vacancies we need to discuss, and is it more important than others, and so forth. And it does seem to me that that is a discussion we need to have before too long.

CHAIRPERSON CASTRO: Yes. I mean, ultimately, I think that that is driven by what our bottom-line budget number will be for this fiscal year, which we don't know. And we are not likely to know until some time around Thanksgiving is what we understand. As I said, the ultimate budget number will very likely be decided during the reconciliation process.

And once we know that, once we know what our bottom-line dollar number is, then we will be able to determine, based on that, where we are -- what our priorities are going to be. And we will expect a cut. I think every agency may -- you know, is going to expect a cut.

Our effort here is to minimize the cut that we are going to receive. And once we know that number, then we will work to have some proposals as to what the priority should be, and we will clearly discuss that. But we just don't know at this point, and --
VICE CHAIR THERNSTROM: So it would not be helpful to you when you go on the Hill to say, "Look, we have had a discussion, and there are priorities we have got with the" --

CHAIRPERSON CASTRO: Oh.

VICE CHAIR THERNSTROM: -- you know, that we have agreed on that are going to --

CHAIRPERSON CASTRO: Yes. Well, here's -- yes, here's part of what we have done in the conversations that I know I have had and I know other Commissioners have had to educate our appropriators, is that here is -- here is the 30-something vacancies we have in the organization now. And, by the way, at least six or seven of those are mission-critical, including head of OCRE, et cetera.

And as the organization stands now, we've got folks wearing multiple hats in the agency, so that 44 FTE number is probably really 30 people. Three or four of them were wearing multiple hats, so anything else beyond that is going to really injure us.

And so we just identify the priority being to maintain some of what we've got here and not necessarily saying, "Well, this is the project we are working on," although we do share with them what our approve reports have been, VRA coming up and the human
trafficking, and talk about our efforts to -- Commissioner Heriot was wonderful to join me telephonically at a meeting in our efforts to try to, you know, work together cohesively in a bipartisan fashion to reach out and reenergize our SACs and to -- so we do talk about specifics.

And it has been -- I think it has enlightened the folks, and certainly they understand what our efforts are based on just the lack of the resources that we have had over the years. So -- but, yes, clearly we do need to be able to strategize and prioritize once we do have that bottom-line number, but -- Commissioner Gaziano?

COMMISSIONER GAZIANO: Another quick item.

Could you update us any more about the search for the OCRE director that I hope is still ongoing?

ACTING STAFF DIRECTOR TOLHURST: It's on hold until we get a budget number.

COMMISSIONER GAZIANO: Oh, is it? Okay.

ACTING STAFF DIRECTOR TOLHURST: Yes.

VICE CHAIR THERNSTROM: And the Staff Director position?

CHAIRPERSON CASTRO: We have not yet received a nominee, as you all know, and we are still waiting. I know there is a process that is ongoing
still at the White House, and I actually reached out
in advance of this meeting and did not hear back,
hoping to have some more detailed information to
provide. But I don't have anything right now other
than --

VICE CHAIR THERNSTROM: I've got a
bleeding heart over here for Kim.

CHAIRPERSON CASTRO: Yes. She is bleeding
a lot, so -- and we -- you know, I mean, the White
House has been -- we have made clear to them we really
need a Staff Director, so -- a periodic call I make
every time, not only in advance of this meeting but at
other times. So we continue to wait.

Any other questions on that?

(No response.)

Any other questions on Staff Director's
report?

(No response.)

If not, we will move on to a discussion of
the proposed use of Commission letterhead and logo.
As you know, we had distributed at the last meeting a
draft proposed revision to AI 9-1. And I know that
there was a suggestion at the last meeting that
perhaps there might be some compromise to that. I
believe there have been some discussions amongst some
Commissioners. I don't know if folks want to talk about those. I don't know if you all had a thought on that. Commissioner Gaziano?

COMMISSIONER GAZIANO: I do. I apologize for not circulating something earlier. But it was I think due in large part to my day job this week that I didn't talk to enough of you to see whether this was viable. This is one alternative, and let me just pause while it's being passed around.

(Pause.)

I am not necessarily set on this, and I hope we do have consensus on this, because I -- for a variety of reasons, I think every clerk in every agency uses that agency's letterhead, every member of Congress uses their committee or their member of Congress' letterhead.

I think that the point that at least I understood was the concern of some Commissioners at the last meeting was that someone might not read a footnote. It might not be prominent enough that we are writing, even if we say in the first sentence -- by the way, we looked at some of the letters that minority and majority Commissioners have sent in the past, and I can't -- didn't find a single Commissioner letter that was not sent in some form of letterhead in
the past, which, again, I think is -- just makes
common sense.

The main feature of this I think to alert
the public is that we state in clear and unambiguous
terms in the very first sentence that you can't read
the letter, get past the first sentence, without
seeing that it is both -- if it is not a majority of
the Commission, that it is being written in the
individual capacities, by whichever number of
Commissioners, and then you give the number on the
Commission.

So anyone can understand that it is a
fraction of the Commission and what that fraction of
the Commission is. I think that's the -- ought to
satisfy everyone's concerns. There is alternatives to
indicate -- you know, to make it look kind of like
what members of Congress do. I don't think we are
strongly wedded to that, at least to the couple of
Commissioners I have been able to talk to. So I hope
something like this satisfies the concerns of the
other Commissioners.

CHAIRPERSON CASTRO: I appreciate your
suggestion. I personally still don't think it
satisfies the concerns. I think it is still a usage
of the logo and letterhead. While I appreciate a more
prominent disclaimer, I still think that the opportunity for confusion is still there. And so I don't know if other Commissioners have any thoughts on that.

COMMISSIONER GAZIANO: Why is that?

CHAIRPERSON CASTRO: Why? You are looking at -- this is the United States Civil Rights Commission, but this is not a, you know, Commission -- we are not Commissioners speaking as the majority of the Commission.

In their last letter, which, you know, you would argue was prominently disclaimed, still ended up in the media being cast as a statement by the Commission and on a topic which we have not even taken up as a Commission. So my personal view is that while I appreciate the thought put into this, I still don't think it answers the concerns that I have. And I don't know if other Commissioners have thoughts on this proposal, but --

COMMISSIONER GAZIANO: If I could respond to that not -- on a matter I brought up before the Commission, the rulemaking that was the subject of that letter was only open for 15 days and would close before the next Commission's meeting. But if we are just sending a -- I could give you the date. Oh, I
wasn't the originator of that letter, but I had our special assistants confirm the facts.

Obviously, individual Commissioners, to function, may want to send out correspondence to ask questions, to respond to questions that we receive individually. And it is absolutely unconvincing to me that the practice that every clerk, every employee, every agency had every Commissioner -- every prior Commissioner has used, can't be used, and that this disclaimer is not enough, you can't make people, obviously -- you can't stop any and all conceivable confusion, but I think that the attempt to dissuade us from using any letterhead to me raises more questions than something that is as clear and plain as this.

CHAIRPERSON CASTRO: Vice Chair Thernstrom?

VICE CHAIR THERNSTROM: What would you like to see, Mr. Chairman, in terms of -- instead of this disclaimer, what would you like to see? I mean, my starting view is if a reporter can get something wrong, can -- if a door is open to -- the door of opportunity is open to distortion, misreading, whatever, reporters will walk through it.

I mean, I -- in the last month or so I have seen a number of articles in which I am referred
to as one of the left members of this Commission. I
mean, these reporters are -- you know, they are just
-- their work is so almost uniformly sloppy with some
exceptions. But so what would you like to see?

CHAIRPERSON CASTRO: Well, you know, what
I would like to see is what we circulated at the last
meeting. And, actually, there have been some
questions -- some proposed modifications, just to
clarify, that were raised by a couple of other
Commissioners that I can walk through.

But, you know, this is -- we are not like
members of Congress. I think when -- pretty much
everyone knows for Congress to act you need -- you
know, they are the legislative body. So when a member
of Congress sends a letter on their letterhead,
everyone knows that they are not speaking for
Congress. That's pretty clear.

So to compare us to Congress, it is apples
and oranges. So I am not persuaded by that argument
either. And, you know, I understand, you know,
someone -- to the extent that, you know, you are
sending someone a thank-you note or something, I don't
see why that would need to be on Commission
letterhead. I don't know what else you would be
writing about, unless it is a substantive policy
matter. And in that case, I think that is where the confusion arises.

COMMISSIONER GAZIANO: Committee chairmen send -- and Congress send letters all the time, and it is usually not made clear whether it was raised with the committee and subject to vote or whether the chairman is just writing as the chairman.

Ranking members -- any committee member writes a letter, and the average public, unless they look things up, don't know whether they're the ranking member or the -- it is also the case that many people in the administration write, and it is entirely unclear whether it is -- there is only one elected President who leads the unitary executive.

It is very often the case that they are writing without clear authorization for the -- most of the time it is without clear authorization of the President. But it would be unprofessional and absurd for members in any other agency not to use letterhead.

Are you aware of any other Commission of the United States Government where Commissioners are not allowed to use the letterhead of their agency, unless it receives a majority?

CHAIRPERSON CASTRO: I don't know the answer to that question, but I know that we are not...
members of Congress. There is eight of us, not 535, so the opportunity for confusion, when less than eight of us speak, is more ripe than when one of 535 speak. And as for the executive branch, you know, the fact that they may be speaking in a confusing manner, I mean, they are so much larger than us.

We are an eight-person Commission, and I think we can govern ourselves much more clearly -- and we should have the ability to do that -- than the legislative or executive branch. So, but that's --

COMMISSIONER GAZIANO: So you haven't surveyed the other commissions?

CHAIRPERSON CASTRO: I have not. But I don't see, you know, what other commissions do or not do should necessarily mandate what we do or not do.

COMMISSIONER KIRSANOW: Mr. Chairman?

CHAIRPERSON CASTRO: Yes, Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thank you, Mr. Chair. Just a few thoughts. First, the Civil Rights Commission has been in existence for more than 50 years. And maybe an archivist can take a hard look at this, but in those 50 years I'm not sure that there has ever been a similar instruction. And in times when civil rights issues were perhaps much more
pronounced in terms of their impact on the country, Commissioners, with my knowledge, regularly sent out individualized letters on Commission letterhead.

Second, if it -- it strikes me that if a reporter did something wrong -- and I have been involved in a number of situations where reporters got things wrong. I tend to concur, in large measure, with Commissioner Thernstrom's characterization, and not because reporters are -- except that reporters aren't necessarily sloppy, but they are necessarily rushed.

I will ask for correction and usually get it. Obviously, corrections don't necessarily -- may not be --

VICE CHAIR THERNSTROM: Too late.
COMMISSIONER KIRSANOW: -- as something contained in the body of the original story, but almost invariably -- I mean, I can't even think of an instance when I never got a correction.

Third, I have been a member of the Civil Rights Commission for about 10 years, and I have never seen any real problem with the letterhead going out. It has gone out -- letters have been sent out by individual Commissioners or groups of Commissioners.

I know Commissioner Yaki has done this
when he was in the minority, and I think it is important for him to have his views expressed under the aegis of the Civil Rights Commission. So people make it -- it's very clear, and it's done in a very professional manner, that he is a member of the Civil Rights Commission.

And lastly, I have been a member of another governmental agency -- the National Labor Relations Board -- and there was no prescription against the use of NLRB letterhead. Now, of course, I couldn't issue decisions all by myself, or issue rules all by myself, but I could express my opinion. And that is the National Labor Relations Board. I am not aware of any other agencies.

But it strikes me that Commissioner Gaziano's offer is a fair compromise. It makes it abundantly clear to anybody who reads it that this is the expressed view of just three Commissioners or two Commissioners or an individual Commissioner. And if the reporter can't get it right, well, I'm not sure, frankly, that a reporter who would get it wrong under those circumstances would be any more likely to get it right with any other kind of formulation.

CHAIRPERSON CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Mr. Chair, I
appreciate what you are trying to do, and certainly we want to avoid the -- any confusion over whether the Commission is speaking qua Commission or as individual Commissioners. And I understand your concerns that people may not be able to make that distinction.

My concern now, as I sit and think about this -- and just to correct what Commissioner Kirsanow did -- yes, I have sent letters when I was in the minority on letterhead, but it was letterhead that I bought and paid for and designed myself. It was not official letterhead.

And, in fact, at the bottom it always said, "Not printed at government expense," because I realized it was something that was part of my training when I was in Congress in terms of the kinds of correspondence that would go out from members of Congress.

My question, though, concerns less the proactive letter than the reactive letter or the response letter. On more than one occasion, I was asked by members of Congress to write to them expressing my dissenting views on a particular subject. I am not too sure exactly how I was supposed to be answering that request under the rules that you promulgated today.
COMMISSIONER GAZIANO: Commissioner Yaki, I seem to also remember some that you wrote with Commissioner Melendez as well.

COMMISSIONER YAKI: Yes.

COMMISSIONER GAZIANO: So you did something arguably similar to --

COMMISSIONER YAKI: Right. Except that there is only one clear thing, is that I was part of the group that wrote the AIs back in 2005. And you will find -- I would defy you to find a letter that I wrote that did not state in there that I am writing, or we are writing in our individual capacities, as members of the Commission.

We always said that straight out -- said that we did not represent the views of the Commission as a whole. And that was something that the AIs at the time -- we are very careful and conscious about, and I was always careful and conscious about that in every letter that I wrote to Congress, whether it was by myself or with Commissioner Melendez at the time when we were writing together.

But my question does go to the fact that there are times when I would be asked by a Senator or a committee to send a letter expressing a dissenting view on an issue that was important to them. And I
don't think they would have been very happy with a letter that was just written on stationery saying, "Michael Yaki," because that's not what they wanted. They wanted a letter from a Commissioner that they could say was from a Commissioner.

Sometimes the only way to really identify that you are a Commissioner in the way that -- in the shorthand that people deal with this stuff is the fact that it has some reference to the Commission on Civil Rights on there. I mean, actually, I can tell you that right now that Commissioner Melendez and I went through like two or three different iterations because, unfortunately, most of my letterhead was at my home in San Francisco. Sometimes the letters can be generated out here.

And so Richard at the time and I would sort of gerryrig something on it. But, again, but we would make it very clear in the very first paragraph we were not representing the views of the Commission, but only our individual views on a particular subject.

COMMISSIONER GAZIANO: Yes. But just one more clarification. I remember various variations when you and Commissioner Melendez -- you did incorporate in all that I remember the basic letterhead that is the --
COMMISSIONER YAKI: Not in all. There is one -- there were a couple of times when the ability to photoshop was defeated. Defeated.

(Laughter.)

It was for the general purpose and general aim --

COMMISSIONER GAZIANO: No, no. My --

COMMISSIONER YAKI: -- to have something that looked like the agency.

COMMISSIONER GAZIANO: You saw my own letterhead, which I would have to now destroy under all the -- under this, which I don't mind doing. You will see that it mirrors it, with the exception that my name is -- in fact, you have --

COMMISSIONER YAKI: You have looked at yours.

COMMISSIONER GAZIANO: In fact, you kind of copied this.

COMMISSIONER YAKI: We copied yours.

COMMISSIONER GAZIANO: Yes, except you didn't put "Not printed at government expense" at the bottom. But to make sure that --

COMMISSIONER YAKI: That's electronic.

COMMISSIONER GAZIANO: So the -- but my question goes to, how do we respond when a member, a
Senator, someone, is asking for an individual take on an issue? because sometimes that is something that we engage in.

CHAIRPERSON CASTRO: Commissioner Kladney, do you have something?

COMMISSIONER KLADNEY: I have an addition to your modification. Commissioner Gaziano and I spoke about this before the meeting, and my proposal was something along the following lines, if I may read it. "We write in our individual capacities, two or three Commissioners, or however many, on an eight-member U.S. Commission on Civil Rights regarding" blah, blah, blah. "The following is not a position of the majority of the Commission, and there are differing views on the subject by other members of the Commission."

CHAIRPERSON CASTRO: Commissioner Gaziano?

COMMISSIONER KLADNEY: That's my proposal.

COMMISSIONER GAZIANO: My only concern with that is we may need to write on a matter that we can't raise to the Commission. And if we say it doesn't -- there are differing views, I don't know necessarily that -- you all should have agreed to our EEOC letter, and -- but I didn't know at the time.

CHAIRPERSON CASTRO: I didn't see it
before you sent it out, so how could I --

COMMISSIONER HERIOT: There was a deadline.

COMMISSIONER GAZIANO: There was a deadline.

CHAIRPERSON CASTRO: Oh.

COMMISSIONER GAZIANO: And we were a couple of days away. But not everything has -- not everything -- we ought to be able to respond to requests before necessarily raising it with the Commission, and maybe we will send a supplementary letter. And that has happened in a couple of cases, too, when a matter has been raised, a matter that was raised by an individual Commissioner or two, then led to a majority letter.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER GAZIANO: I just think that we wouldn't be able to say that it -- there is necessarily disagreement on a matter. It would also require us to bring everything to the Commission's attention. What if the majority votes not to put it on the agenda? That has happened before, too. What if it was put on the agenda but it didn't receive a vote? What do you think of that?

CHAIRPERSON CASTRO: Commissioner Heriot?
COMMISSIONER HERIOT: Scattered thoughts here. You know, sometimes we genuinely don't know what the Commission's view is on an issue, and, therefore, it would be inappropriate to say that there are differing views on the Commission, because there may not be.

Sometimes we could -- sometimes we do know, and I have no objection to using that language in those cases where we do know. So at least I think we've got a safe harbor on that. Then, there are going to be cases where instead of saying, "There are differing positions," you could say, "There may be differing positions." Got no objection to that.

There are going to be situations where we just suspect that there aren't differing positions, but we just don't have time to wait, because there is a deadline. We ought to be able to agree at the very minimum at this point that if language like that that Commissioner Kladney has proposed is used, then that is fine to use Commissioner letterhead.

I do think that we have a good incentive here to come up with some compromise that works, because I believe we are entitled to use the letterhead. And if we don't have an agreement about what everyone is happy with, then we are going to have
-- you know, a thousand flowers are going to bloom, and you may not be happy with all of them. So let's --

CHAIRPERSON CASTRO: I'm not sure what that means.

COMMISSIONER HERIOT: That means that like every time a Commissioner comes up with an idea of, you know, this has got to work --

COMMISSIONER YAKI: She's making a Chairman Mao reference, so I'm not too sure what --

(Laughter.)

COMMISSIONER HERIOT: Not up on your Mao references, I guess.

CHAIRPERSON CASTRO: No, I guess not. I'll have to bring that along with my Robert's Rules of Order next time.

Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Mr. Chairman, I think that any use of the symbol other than as an expression, either by the chair or the majority, is ripe for misinterpretation. And I think for simplicity's sake, and so that the Commission will not be misunderstood, I actually think your proposal is really the only workable one at this point. So I want to make clear my support.
CHAIRPERSON CASTRO: Vice Chair

Thernstrom?

VICE CHAIR THERNSTROM: I'm going to second that.

CHAIRPERSON CASTRO: Okay. So --

COMMISSIONER GAZIANO: We have another proposal.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER HERIOT: Starting with Todd's proposal, "We write in our individual capacity as two, three, whatever Commissioners on the eight-member U.S. Commission on Civil Rights, and the views expressed in this letter are not necessarily those of the full Commission."

CHAIRPERSON CASTRO: Could you read that again?

COMMISSIONER HERIOT: "We write in our individual capacity as 'blank number' of Commissioners on the eight-member U.S. Commission on Civil Rights, and the views expressed herein, or whatever, are not necessarily those of the full Commission." Then, go on to the rest of the letter.

COMMISSIONER GAZIANO: I move that we adopt that as a consensus view on how we should notify people who receive these letters of the capacity that
we are writing in?

COMMISSIONER HERIOT: The advantage here is that that is all-purpose language. So we can all agree with it. If, instead, we go to your proposal, then, again, the minority Commissioners believe that they are entitled to use the letterhead, and you are going to lose control.

CHAIRPERSON CASTRO: Here, let me -- Vice Chair, and then let me make a suggestion.

VICE CHAIR THERNSTROM: I just have a question for Commissioner Yaki. I couldn't understand what your bottom line was. What, at the end of the day, would you like to see here?

COMMISSIONER YAKI: That's a good -- thank you very much, Commissioner Thernstrom. In concept, I understand the confusion issue. I perhaps have a different viewpoint, different perspective from some of the other Commissioners on the Commission, when -- the fact that when I was in the minority, the only voice that I frequently had was access to my status as a Commissioner of the minority when it came to expressing viewpoints on some of the issues that came forward.

As you know, there were a number of different letters that were generated by the majority
under the former administration. Those letters went out on Commission letterhead stating that this was the official position of the Commission, and making it sound as if this was the absolute pronouncement of the state of play.

I would then often be requested by members, by Senators, by groups, to counter that to show that there were indeed a different way of looking at this. And if you were to ask me, I think that it is very difficult to show that I was speaking as an independent member of the Commission, as someone who had been appointed by either the President or Congress to the Commission, with my own individual point of view.

I think the power would have been substantially diminished if either: a) I could not do it, or b) I did it on letterhead that simply said "Michael Yaki." I don't know if I could get away with "Mike Yaki, U.S. Commission on Civil Rights." I don't know if I could get away with "Michael Yaki, Commissioner, U.S. Commission on Civil Rights." I don't know if I could get away with "Michael Yaki, Commissioner Michael Yaki, United States Commission on Civil Rights." I'm a little unclear as to what we define letterhead to be in some ways.
I do know this, and that is when you are
-- I see myself as an independent voice on this
Commission. I do not see myself as left or right or
right or left. I'm a Democrat for sure. My views are
-- my views are what they are, but I am also an
independent member, independently appointed to this
Commission, and I have a right to express my views.

Now, you know, the question is: how much
is that right circumscribed by the ability to -- and
that is why when we did -- when I worked on the AIs
with Jennifer Braceras in 2005, in response to other
abuses of the use of letterhead at the time, we put in
there -- I mean, what confuses me about Commissioner
Gaziano's compromise is that that is essentially what
the AI states right now.

We are supposed to identify the fact that
we are speaking as individual members, that we do not
speak for the majority, we do not speak on behalf of
the Commission. That was the way that we solved it,
short of denying anyone letterhead.

And I am truly, you know, conflicted on
this. If there are substantial abuses going on, or
that is not going on, then I am likely to support the
chair. But if there are reasonable compromises being
done that will be followed and enforceable, I am at
this point open to that, because I can -- as much as, you know, hopefully I will be in the majority sometime soon, I also remember how difficult it was being in the minority and ensuring that my voice was heard during some critical debates that I was concerned about.

COMMISSIONER KLADNEY: Can I move for a

10-minute recess?

CHAIRPERSON CASTRO: Well, yes, let's do that.

COMMISSIONER YAKI: Can we just move on and just table --

CHAIRPERSON CASTRO: Here is what I was going to suggest before we go to recess is, you know, I -- this was a great discussion, and what I would like to do is take the proposed compromises you have suggested today, what Commissioner Kladney has said, what Commissioner Yaki said, obviously, you know, my point of view, and perhaps circulate a revised AI for us to look at in advance of the November meeting and vote on that would try to incorporate some of the concerns that are raised here, while at the same time trying to address some of the concerns that I have and see if we can actually find a balance.

So that we actually can protect the
minority, to the extent right now we don't have one, we've got sort of, you know -- let me finish. So that we can then actually try to get something that is a real compromise without trying to wordsmith something here today.

COMMISSIONER HERIOT: I'm happy with putting off the vote until next month.

COMMISSIONER KLASTNEY: All right.

CHAIRPERSON CASTRO: Commissioner Kladney?

COMMISSIONER KLASTNEY: Then I don't need a recess.

COMMISSIONER HERIOT: But this is my chance to talk to people, because nobody is going to want to talk about it during the month, because --

CHAIRPERSON CASTRO: Let's do that after the meeting.

COMMISSIONER YAKI: But there are other biological reasons for a recess as well, so you --

(Laughter.)

CHAIRPERSON CASTRO: Let's just move on, but I think we will -- why don't we do that. So if you can actually provide me with the additional language that you had in your second compromise, Commissioner Kladney can give me what he has, and then we will work on trying to come up with something that
would hopefully find everyone's comfort zone. All right? And we'll vote on it in November.

We will circulate it in advance, but we can talk about it some more. We have spent a lot of time on this, but it was time well spent. So if that's all right with everyone else --

COMMISSIONER HERIOT: Can I just make one more --

CHAIRPERSON CASTRO: Sure. Go ahead.

COMMISSIONER HERIOT: -- comment for the record here?

CHAIRPERSON CASTRO: Yes, ma'am.

COMMISSIONER HERIOT: And I just wanted to clarify, because there were a couple of statements made that might be misinterpreted.

CHAIRPERSON CASTRO: Okay.

COMMISSIONER HERIOT: And that is the difference between this proposal and what we have been doing in the past is simply it has been brought up from a footnote to the text. There have been no letters in which members of the minority have represented themselves as anything other than three individual Commissioners.

COMMISSIONER GAZIANO: It's also the case, even in -- there may have been a failing in one or two
letters, but if so I don't remember what they were, where the majority would send out letters. Generally, in the footnote 1 of those letters, it reported that a vote was taken and so and so abstained, so and so voted against. So even in those majority letters, we -- absent some failing, it was our practice to indicate where there was dissent. And I think that's a good practice. That is always a good practice.

So I may not be in the majority. I hope when the majority sends out majority -- they do the same, and that would be one of my -- I don't know that we need to crystallize it in an AI, because I don't think AIs are binding on Commissioners. But it is our understanding amongst each other that if you are sending out a majority letter, and some of us have dissented, that that ought to be somewhere in the body of the letter.

CHAIRPERSON CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: For your information, Mr. Chair, those footnotes were a result of my vociferous protests over how the letters were being written and characterized.

VICE CHAIR THERNSTROM: Yes. But surely you wouldn't believe a little footnote doesn't exactly solve the problem.
COMMISSIONER YAKI: That's the best I could get out of --

CHAIRPERSON CASTRO: All right. Well, what we'll -- you know, we appreciate the discussion. We will hopefully have a proposal that will reflect the comfort zone for everyone at the November meeting.

Next we are moving on to the discussion of the usccr.gov email accounts. Madam Acting Staff Director?

ACTING STAFF DIRECTOR TOLHURST: This will be your motion, but I believe that this discussion should go into closed session under Exception 2, information related to internal personnel rules and practices of the Commission.

CHAIRPERSON CASTRO: Can I make that motion? So I move pursuant -- pursuant to -- what is this?

ACTING STAFF DIRECTOR TOLHURST: Just move to make it closed, and then we can use this.

CHAIRPERSON CASTRO: Okay. So closed pursuant to --

ACTING STAFF DIRECTOR TOLHURST: Exception 2.

CHAIRPERSON CASTRO: -- pursuant to Exception 2 of the Code of -- 45 CFR Section 702.53.
I am moving that we go into closed session to discuss internal personnel rules and practices of the Commission. Do I have a second?

COMMISSIONER ACHTENBERG: Second.

COMMISSIONER GAZIANO: I'm going to ask for more information before I vote to close the meeting. I don't -- I can't imagine the type of -- there are some rules that that might make sense, but just because they fall in that category I think we ought to err on the side of having public discussions.

Why do you suspect that this might veer into a ground that we can't keep public?

ACTING STAFF DIRECTOR TOLHURST: I agree.

I mean, I am all for keeping things public whenever possible, and if that's how the vote goes you can certainly do that. It's a pretty broad exception for internal personnel rules. This is a discussion of an AI governing all personnel, so it is clearly the available exception to us.

I believe that, depending on the types of questions that a arise, that privilege -- attorney-client advice from OGC -- might be aired during the discussion.

COMMISSIONER GAZIANO: Privileged as to who?
ACTING STAFF DIRECTOR TOLHURST: Advice from the General Counsel to the Commissioners as to how to follow the law, how to not violate the law.

COMMISSIONER GAZIANO: I don't think legal interpretation is -- we ought to exercise a privilege. With regard -- especially with regard to this issue, we ought to exercise privilege, even if one exists. I would prefer that we keep it open, and that if some particular tiny segment of this begins to go in that direction we can renew the motion.

CHAIRPERSON CASTRO: We have a motion that has been made. Has it been seconded?

COMMISSIONER ACHTENBERG: Second.

CHAIRPERSON CASTRO: Okay. Let's take a roll call vote, then.

COMMISSIONER HERIOT: Can I just ask a question?

CHAIRPERSON CASTRO: Sure.

COMMISSIONER HERIOT: Is there some information regarding a particular individual that is likely to come up?

ACTING STAFF DIRECTOR TOLHURST: No, but that's not required under the -- I mean, the exception is -- we could use this for any internal personnel rules or practices. Now, it says we may, so you don't
have to. If you don't want to close it, you don't have to.

CHAIRPERSON CASTRO: Well, we'll take a vote, and we'll see how the vote turns out. Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: This is a vote on whether to go into --

CHAIRPERSON CASTRO: Go into closed session.

VICE CHAIR THERNSTROM: -- closed session. I'm also not clear why we're going into closed session on this matter. But I don't -- I'm abstaining. I mean --

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

COMMISSIONER KIRSANOW: I'm sorry. I didn't hear what Commissioner Thernstrom just said.

CHAIRPERSON CASTRO: She is abstaining.

VICE CHAIR THERNSTROM: I'm abstaining because it is not absolutely clear to me why this needs closed session.

COMMISSIONER KIRSANOW: Yes. I'm in the same position. I guess I would vote no.

CHAIRPERSON CASTRO: Okay. Commissioner Heriot, how do you vote?
COMMISSIONER HERIOT: I guess I vote no.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: I vote no, at least for now.

CHAIRPERSON CASTRO: Commissioner Yaki, how do you vote?

COMMISSIONER YAKI: Aye.

CHAIRPERSON CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Aye.

CHAIRPERSON CASTRO: Commissioner Kladney?

COMMISSIONER KLADNEY: Aye.

CHAIRPERSON CASTRO: And I vote in favor. One, two, three, four yeses, three nos, and an abstention. So it passes.

COMMISSIONER GAZIANO: There was one time when I suggested that we go into Executive Session, but I wasn't sure, and then when we came back out of Executive Session you all I think properly determined it shouldn't have been in Executive Session. So I hope if we really don't --

CHAIRPERSON CASTRO: Absolutely.

COMMISSIONER GAZIANO: -- discuss anything that is confidential --
CHAIRPERSON CASTRO: Absolutely, yes.

Okay. So now we're going to go into closed session.

COMMISSIONER YAKI: We're just throwing some gossip about you, and then we'll --

(Laughter.)

COMMISSIONER GAZIANO: Any time you mention my name I want --

CHAIRPERSON CASTRO: So do I need to say this now?

ACTING STAFF DIRECTOR TOLHURST: No.

CHAIRPERSON CASTRO: Okay.

ACTING STAFF DIRECTOR TOLHURST: We just sign that and post it.

CHAIRPERSON CASTRO: Okay.

ACTING STAFF DIRECTOR TOLHURST: If we end up not opening --

CHAIRPERSON CASTRO: Okay.

COMMISSIONER GAZIANO: Would the Staff Director let the record reflect which people, besides the Commissioners, you have determined can stay in the room?

ACTING STAFF DIRECTOR TOLHURST: Yes.

That's -- the Commissioners, their assistants, Chris Byrnes, and David Snyder.

CHAIRPERSON CASTRO: Okay.
COMMISSIONER GAZIANO: And the Court Reporter.

ACTING STAFF DIRECTOR TOLHURST: And the Court Reporter.

VICE CHAIR THERNSTROM: And those who leave are going to leave a fascinating discussion.

(Whereupon, the proceedings in the foregoing matter went into Executive Session at 10:45 a.m. and returned to Open Session at 11:14 a.m.)

CHAIRPERSON CASTRO: All right. We are back on the record in open session.

The next item under Management and Operations is a request that I put on here to discuss the possibility of changing the date for the December Commission meeting. The reason I am asking this as a personal indulgence is that I have been informed that on December 16th, which is the day that our meeting is scheduled, I am going to be receiving an honorary doctorate from Roosevelt University.

COMMISSIONER HERIOT: Great.

CHAIRPERSON CASTRO: Thanks. And I would like to be there for that, and of course I would also like to be at the Commission meeting. So I was hoping that -- I know December is a tough month for folks,
but I just want to have a discussion here to see if there might be an alternative date that would work for us. And if not, then, of course, you know, I would -- the fallback would be that I would not be here December 16th.

So I don't know if something like that following Monday, the 19th, would work for folks.

COMMISSIONER HERIOT: Monday? I hadn't thought of that.

CHAIRPERSON CASTRO: I know it's unusual.

Right.

COMMISSIONER HERIOT: I think I can do that.

COMMISSIONER GAZIANO: Or the previous Monday. The 9th -- I heard the 9th was going to be -- it would be inconvenient, very inconvenient for me, but I could make it. I would have to leave a day early from something that is very important to my --

COMMISSIONER HERIOT: I can't do the 9th.

COMMISSIONER KLADNEY: I can't do the 9th either.

COMMISSIONER YAKI: I can do the 19th.

COMMISSIONER HERIOT: I can do the 19th, Monday.

COMMISSIONER ACHTENBERG: I can as well.
COMMISSIONER GAZIANO: That's just a little close to Christmas holidays. What about the 9th or --

CHAIRPERSON CASTRO: Bring eggnog.

COMMISSIONER YAKI: We're the ones who travel the farthest.

COMMISSIONER GAZIANO: I understand. I understand. I was making --

COMMISSIONER YAKI: They're hitching Santa's sleigh.

COMMISSIONER GAZIANO: Is the 19th better than the 12th?

COMMISSIONER HERIOT: Yes.

COMMISSIONER YAKI: Yes.

COMMISSIONER KIRSANOW: Mr. Chairman, the 19th doesn't work for me. I have an oral argument in D.C. Circuit Court that day.

CHAIRPERSON CASTRO: Madam Vice Chair?

VICE CHAIR THERNSTROM: As you and I have discussed, the period between Thanksgiving and Christmas is just unknown for me. I've got -- I need to do some traveling, and I can't establish the dates until I know I can walk through an airport.

CHAIRPERSON CASTRO: Right, I understand.

COMMISSIONER KLASTNEY: Commissioner
Kirsanow, what time is his argument?

CHAIRPERSON CASTRO: What time is your argument, Commissioner?

COMMISSIONER KIRSANOW: 10:00.

COMMISSIONER HERIOT: How about after --

COMMISSIONER KIRSANOW: We expect it will be -- it will last at least an hour.

COMMISSIONER HERIOT: How about afternoon?

CHAIRPERSON CASTRO: We meet what time?

COMMISSIONER YAKI: 1:00.

CHAIRPERSON CASTRO: 1:00 on the 19th, would that work?

COMMISSIONER KIRSANOW: I see no problem with that. In fact, I will be in town anyway.

CHAIRPERSON CASTRO: All right. If that works for everyone, that would be great. I really appreciate your indulgence on that, and hopefully you will be able to be here.

VICE CHAIR THERNSTROM: Yes. And if I'm not, I mean, the Commission can function without me.

COMMISSIONER YAKI: You ought to come in a Santa Claus outfit, though, just --

CHAIRPERSON CASTRO: Pardon me?

COMMISSIONER YAKI: You've got to come in a Santa Claus outfit, though.
CHAIRPERSON CASTRO: Oh, my goodness. I don't know about that. How about if I come as Papa Noel instead?

COMMISSIONER YAKI: Papa Noel.

COMMISSIONER HERIOT: Or wear your new hood.

CHAIRPERSON CASTRO: Right. I'll come with the collar and the whole thing, yes. So do we need a vote on that, or can we just do this by unanimous consent.

VICE CHAIR THERNSTROM: We don't need a vote on it.

CHAIRPERSON CASTRO: All right, all right. So the 19th of December 1:00 p.m. Thank you very much.

VI. STATE ADVISORY COMMITTEE ISSUES

CHAIRPERSON CASTRO: Now we move on to our State Advisory Committees. So I move that the Commission recharter the California State Advisory Committee. Under this motion, the Commission appoints the following individuals to that committee based upon recommendations from our Staff Director: James Bolton, John Dodd, Marc Dollinger, Percy Duran, Cafe Fang, Joe Hicks, Manuel S. Klausner, Sanford Lakoff, Leonard Mitchell, Velma Montoya, Matthew Rosenthal,
Ralph Rossum, Maimon Schwarzchild, Robin Toma --

COMMISSIONER HERIOT: Mymon (phonetic).

CHAIRPERSON CASTRO: I'm sorry.

COMMISSIONER HERIOT: Mymon (phonetic).


Pursuant to this motion, the Commission appoints Percy Duran as chair of this rechartered California State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRPERSON CASTRO: Okay. We have a motion and a second. Any discussion?

(No response.)

Hearing none, I call the question. Vice Chair Ternstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Abstain.

CHAIRPERSON CASTRO: Commissioner Heriot,
COMMISSIONER HERIOT: Yes, although it seems to me that the balance on this committee is not what it was before.

CHAIRPERSON CASTRO: Commissioner Gaziano, how do you vote?

COMMISSIONER GAZIANO: I make the same -- a very delicately balanced but slightly liberal SAC has now become more liberal for reasons unknown, but I think it is close enough, within the margin of error. I will vote yes.

CHAIRPERSON CASTRO: Okay. I will just put down a yes there. Commissioner Yaki?

COMMISSIONER GAZIANO: I want the record to reflect --

CHAIRPERSON CASTRO: The record will reflect it, but I will just put a yes here. Commissioner Yaki?

COMMISSIONER YAKI: After Commissioner Gaziano's description of the committee, how can I not vote yes?

(Laughter.)

CHAIRPERSON CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes.
CHAIRPERSON CASTRO: Commissioner Kladney?

COMMISSIONER KLADENY: Just a little comment. I just don't know how Nevada wound up with nine Republicans and three Democrats on the committee. But in accordance with Commissioner Gaziano, I will vote yes.

(Laughter.)

CHAIRPERSON CASTRO: And I also vote yes, so we have approval with one abstention.

Next, we move on to the Arizona State Advisory Committee. Do I do the motion to sever after I read it --

ACTING STAFF DIRECTOR TOLHURST: Arizona?

CHAIRPERSON CASTRO: I'm sorry, Nebraska. I apologize. It's out of order on my list here.

So the next item is the Advisory Committee in Nebraska, so I move that the Commission recharter the Nebraska State Advisory Committee. Under this motion, the Commission appoints the following individuals to the committee based upon the recommendations of our Staff Director: Michaele Baumert -- did I pronounce the first name right? Glenn Freeman, Edmund Hamann, William Harding, Peter Longo, Cora Micek, Shirley Mora James, Rebecca Murray, Chad Richter, Jose Soto, Kimberley Taylor-Riley,
Kenneth Vampola.

Pursuant to this motion, the Commission appoints Glenn Freeman as chair of the rechartered Nebraska State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment. Is there a second?

COMMISSIONER YAKI: Second.

CHAIRPERSON CASTRO: Okay. Do we have any discussion?

COMMISSIONER GAZIANO: I have two concerns, and I'm not even sure how I'll vote. Again, this is a SAC with only 11 members. I made only one recommendation. Maybe there was some terrible flaw in the --

CHAIRPERSON CASTRO: Twelve members.

COMMISSIONER HERIOT: It's 12 members.

COMMISSIONER GAZIANO: For Nebraska?

CHAIRPERSON CASTRO: Yes.

COMMISSIONER GAZIANO: Okay. Well, even 12, that is still on the low side of what is required. Maybe there was some horrible flaw the staff thought in the one member I advised, but for -- I don't know if this came up last meeting when Commissioner Kladney
was there, but we have been finding these so-called
Republicans are the most left-wing Republicans in some
of these states that are imaginable, almost veritable
Marxists, in fact, so I -- I look beyond the party
label and hope for some ideological balance.

There are some other parts of this slate
that --

COMMISSIONER YAKI: Do you want Socialists
on there as well, is that what we're talking about?

COMMISSIONER GAZIANO: Whatever. There
are other portions of this slate that may still make
it a workable slate. But in the future, I would urge,
for a variety of reasons, that we look for more
ideological balance, and that we shoot for more than
12.

CHAIRPERSON CASTRO: Well, you know, I
guess Marxism is in the eye of the beholder. But, you
know, as I count this up, there are six Republicans
and three Democrats. So frankly, I think there is,
you know -- to add another Republican would really
make this out of whack.

COMMISSIONER GAZIANO: Again, I --

CHAIRPERSON CASTRO: I think that --

COMMISSIONER GAZIANO: -- I see one --

CHAIRPERSON CASTRO: -- this is fairly
balanced.

COMMISSIONER GAZIANO: I see one conservative, seven left wing folks, and some that I don't really know.

CHAIRPERSON CASTRO: And I think that we have been striving to provide more balance to these State Advisory Committees than we have seen in a long time. While at some time we may see one R or two Rs or one D or two D more than others, I think it is within the margin, although, again, I think this is more than adequately balanced on the Republican side of the agenda.

Any other discussion on this?

(No response.)

Hearing none, then we will take a roll call vote on it. Vice Chair Thernstrom, how do you vote?

VICE CHAIR THERNSTROM: Yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I vote -- I guess I vote yes.
CHAIRPERSON CASTRO: Okay.

COMMISSIONER HERIOT: By my count we have several liberals, three conservatives, and two indecipherables.

CHAIRPERSON CASTRO: Commissioner Gaziano?

COMMISSIONER GAZIANO: I think I will go no. My count is a little different than Commissioner Heriot's on the ideological balance, but it's not within the margin of error.

CHAIRPERSON CASTRO: Commissioner Yaki?

COMMISSIONER YAKI: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg?

COMMISSIONER ACHTENBERG: Yes.

CHAIRPERSON CASTRO: Commissioner Kladney?

COMMISSIONER KLDANEY: Yes.

CHAIRPERSON CASTRO: So we have -- it passes with one, two, three, four, five, six yeses, and I vote yes, so that's seven yeses, and a no.

Okay. So now we move on to Arizona. So I move that the Commission recharter the Arizona State Advisory Committee. Under this motion, the committee appoints the following individuals to that committee based upon the recommendations of our Staff Director:

Clint Bolick, Blanca Esparza, Jose Esparza, Lawrence
Gallagher, Keli Luther, Andrea Martinez, Jose Matus, James McKenzie, Catherine Medina, Vernon Parker, who I am going to move to sever, Peri Radecic, Frederick Taylor.

Pursuant to this motion, the Commission appoints Andrea Martinez as chair of the rechartered Arizona State Advisory Committee. These members will serve as uncompensated government employees. Under this motion, the Commission authorizes the Staff Director to execute the appropriate paperwork for the appointment.

Do I sever now or --

COMMISSIONER KLADNEY: Sever now.

CHAIRPERSON CASTRO: Sever? And I move to sever Vernon Parker from consideration at this time.

Is there a second?

VICE CHAIR THERNSTROM: Second.

CHAIRPERSON CASTRO: Okay. Discussion?

Commissioner Gaziano?

COMMISSIONER GAZIANO: Just want other Commissioners to know that my special assistant sent a note a week ago to the Staff Director about a concern that I think other people noticed about a particular -- one of the -- since it was a reappointment, the individual's reappointment, we have a particular
policy I know to send an inquiry. It would have been a little better if -- I know with the rush of other business it's difficult to have done that prior to this meeting. I would have liked to have had that resolved earlier.

ACTING STAFF DIRECTOR TOLHURST: Actually, the Regional Director is on vacation, and he -- that person has to facilitate that for me. So --

COMMISSIONER GAZIANO: Okay. Well, just so that other Commissioners know that I noticed the same issue that was noticed by others, or at least my special assistant did, and tried to draw it to the attention of the appropriate person.

I did have only one nominee for this Arizona SAC, too -- again, who didn't make the slate, and this is a small slate. It was the former -- I certainly don't think he would mind, maybe -- if you find this person problematic, that's a personnel issue not to state on the record, but it's a former gubernatorial candidate for Arizona, who lost to the incumbent governor.

Len Munsell is an attorney who was -- served in different appointed offices, and I that his work on anti-pornography and the exploitation of women involved in pornography is particularly appropriate.
for the SAC.

He is currently the President of Arizona Christian University, so to have a university president, who has served in other think-tank positions -- you know, I, again, don't know why the staff thought that they couldn't add him to the SAC, but when you have someone of that caliber willing to serve on our SAC, I would recommend him to others, whether or not Mr. Parker, who was severed, is included in the SAC.

So I would not -- I don't think I will vote for approval of the SAC at this time, and I substitute that we just postpone voting on this SAC until we know what the full slate is going to be at our next meeting.

CHAIRPERSON CASTRO: Any other discussion?

COMMISSIONER HERIOT: Is that a motion?

COMMISSIONER GAZIANO: Yes. I move to substitute that we postpone vote on this SAC --

COMMISSIONER HERIOT: Okay. I will second that.

CHAIRPERSON CASTRO: Okay. So we have a motion to postpone the vote. Is there any discussion on that?

(No response.)
I would say we should just vote on those that are in front of us. We've got an upcoming potential backlog of SAC recharters. We have a number that have expired or are expiring, and we just need to move these through. We can still allow this individual, Mr. Parker, to provide his response to the appropriate agency officer. And it could be that he or she -- I'm sorry, he gets that addressed and he comes on. If not, then they can certainly explore whether there is someone, maybe this person that you suggested substituted.

COMMISSIONER HERIOT: Given that we could add anyway, why don't we just add the -- add Todd's nominee now?

CHAIRPERSON CASTRO: So -- because I don't know what the reason for that person not moving forward was.

COMMISSIONER GAZIANO: He hasn't formally applied. He has expressed interest, but --

CHAIRPERSON CASTRO: So, you know, I --

COMMISSIONER GAZIANO: The application process -- the Staff Director the notifies you that -- to go through the formal application process.

CHAIRPERSON CASTRO: So --

COMMISSIONER GAZIANO: We have
communicated to the Staff Director a month ago that he was interested. And that may be -- not everyone we indicate is interested -- if the Staff Director is putting together a slate, and it is already at 19 -- what is our maximum?

ACTING STAFF DIRECTOR TOLHURST: And let me say, I don't put together the slates. I forward all of your suggestions to the regions. The regional directors create the slates, because they are, in theory, more familiar with the states that they represent. And they create a balance based not only on political affiliation but all sorts of diversity, skill sets, what people bring to the table.

And I -- again, Peter is out. I can ask him why that person wasn't --

COMMISSIONER GAZIANO: Sure. I --

CHAIRPERSON CASTRO: And for that reason --

COMMISSIONER GAZIANO: I am bringing it to your attention. You know, in situations like this, I know your -- in your supervisory role you can raise those kind of questions. I'm just -- I hope that everyone I nominate is invited to join.

COMMISSIONER K Ladney: Well, it sounded like it was --
COMMISSIONER GAZIANO: No, no, no. No, no, I -- I'm trying to suggest that there may be some reason why they don't invite everyone that we recommend. We have had this discussion in prior months about -- but I certainly think that Commissioner recommendation should be given a serious look. That's all I'm saying.

COMMISSIONER KLADENY: So can we approve this slate and then --

CHAIRPERSON CASTRO: Right now we have a motion pending to push the slate off to the next, but my view is that we should vote on the slate and give this person an opportunity to present their response to the concerns we have. So, but we need to vote first on the motion to put it off.

So on that motion, we will call the question. I vote no on the motion to delay the slate. Vice Chair, how do you vote?

VICE CHAIR THERNSTROM: I vote yes.

CHAIRPERSON CASTRO: Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIRPERSON CASTRO: Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: Yes.
CHAIRPERSON CASTRO: Commissioner Gaziano,
how do you vote?

COMMISSIONER GAZIANO: Yes.

CHAIRPERSON CASTRO: Commissioner Yaki,
how do you vote?

COMMISSIONER YAKI: Yes.

CHAIRPERSON CASTRO: To delay the slate.

COMMISSIONER YAKI: Yes.

CHAIRPERSON CASTRO: Commissioner Achtenberg, how do you vote?

COMMISSIONER ACHTENBERG: No.

CHAIRPERSON CASTRO: Commissioner Kladney,
how do you vote?

COMMISSIONER KLANDNEY: Yes.

CHAIRPERSON CASTRO: Okay. So the ayes have it. We will delay Nebraska --

COMMISSIONER KLANDNEY: No, Arizona.

CHAIRPERSON CASTRO: -- I'm sorry, Arizona to next month with a vote of one, two, three, four, five, six yeses and two nos.

VII. ADJOURN

CHAIRPERSON CASTRO: Okay. So that is the business that we have. Is there a motion to adjourn?

VICE CHAIR THERNSTROM: I so move.

CHAIRPERSON CASTRO: Second?
COMMISSIONER Kladney: Second.

Chairperson Castro: All in favor say aye.

(Whereupon, at 11:32 a.m., the proceedings in the foregoing matter were adjourned.)