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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C., at 10:00 a.m., Catherine E. Lhamon, Chairman, presiding.

PRESENT:

CATHERINE E. LHAMON, Chair
PATRICIA TIMMONS-GOODSON, Vice Chair
DEBO P. ADEGBILE, Commissioner
GAIL HERIOT, Commissioner
PETER N. KIRSANOW, Commissioner
DAVID KLABNEN, Commissioner*
KAREN K. NARASAKI, Commissioner
MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director
MAUREEN RUDOLPH, General Counsel

*Present via telephone
STAFF PRESENT:

LASHONDRA BRENSON
PAMELA DUNSTON, Chief, ASCD
DAVID MUSSATT, Chief, RPCU
ALFREDA GREENE
WARREN ORR
MICHELE RAMEY
SARALE SEWELL
BRIAN WALCH
MARIK XAVIER-BRIER

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART
ALEC DUELL
JASON LAGRIA
CAISSA MULDER
AMY ROYCE
RUUKU SINGLA
ALISON SOMIN
IRENA VIDULOVIC
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CHAIR LLAMON: The meeting of the U.S. Commission on Civil Rights comes to order at 10:00 a.m. on August 18, 2017.

Our meeting takes place at the Commission headquarters at 1331 Pennsylvania Avenue, Northwest, Washington, D.C.

I'm Chair Catherine Lhamon. Commissioners who are present in addition to me are the Vice Chair, Patricia Timmons-Goodson; Commissioner Adegbile; Commissioner Heriot; Commissioner Narasaki; and Commissioner Kirsanow. I believe we have on the telephone, but I'd like for you to confirm as I say your name, Commissioner Kladney. Commissioner Kladney, are you present?

COMMISSIONER KLADNEY: Yes, I am. Sorry.

CHAIR LLAMON: Thank you.

(Laughter.)

COMMISSIONER KLADNEY: Having button trouble already.

CHAIR LLAMON: Commissioner Yaki, are you present?

COMMISSIONER YAKI: I am here.

CHAIR LLAMON: Terrific. A quorum of the
Commissioners is present.

I see that the court reporter is present.

Mr. Staff Director, are you present?

MR. MORALES: I am present.

CHAIR LLAMON: Thank you. The meeting now comes to order.

I. APPROVAL OF AGENDA

CHAIR LLAMON: Is there a motion to approve the agenda for this business meeting?

VICE CHAIR TIMMONS-GOODSON: So moved.

CHAIR LLAMON: Thank you. Is there a second?

COMMISSIONER ADEGBILE: Second.

CHAIR LLAMON: Perfect. I'm going to ask for amendments. I have a few to start us off.

First, I'd like to remove the discussion and vote on the LGBT employment discrimination report, as some Commissioners have requested additional time to review the report. I thank the staff for finalizing the report for our review, which we will place on our agenda for next month's meeting.

Second, I'd like to amend to add consideration for a statement titled "The U.S. Commission on Civil Rights Condemns the Administration's Military Ban on Transgender
Third, I'd like to amend to add a presentation by California Advisory Committee Member Rachel Sigman, who requested to speak to the Commission to present her dissent on that Committee's report.

Are there any other proposed amendments?

COMMISSIONER ADEGBILE: Madam Chair?

COMMISSIONER KLADENEY: Yes, Madam Chair.

I'd like to amend the agenda to add a statement that has been circulated regarding asset forfeiture, the DOJ's policy.

CHAIR LLAMON: Thank you. Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes, Madam Chair.

I'd like to add two items. One, a statement on the reversal of the Department of Justice position on the National Voting -- on the NVRA; and the second is to add a vote on an administrative instruction that I proposed and shared with the other Commissioners.

CHAIR LLAMON: Thank you. Commissioner Adegbile?

COMMISSIONER ADEGBILE: I would like to add a statement on Charlottesville on behalf of the Commission, which has been circulated to the
CHAIR LLAMON: Thank you. Are there any other proposed amendments? Okay. If there are no further amendments, let's vote to approve the agenda as amended. All those in favor say aye.

(Chorus of ayes.)

All those opposed? Any abstentions? The motion passes unanimously.

II. BUSINESS MEETING

A. HEADQUARTERS REPORTS AND PROGRAM PLANNING

CHAIR LLAMON: First, we will discuss and vote on the discovery plan, outline, timeline, briefing date, and location for our FY2018 Statutory Enforcement Report on Voting Rights. Do I have a motion, so we can open the floor for amendments and discussion?

VICE CHAIR TIMMONS-GOODSON: So moved.

COMMISSIONER ADEGBILE: Second.

CHAIR LLAMON: Terrific. Thank you. So we'll now have a discussion on the motion. I'll start by offering a few amendments, which we circulated yesterday. My proposed amendments are to the discovery plan and outline, adding language to specify that the report should look at Section 208 of the Voting Rights Act, which states that, "Voters..."
requiring assistance because of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice."

To the discovery plan, I propose the following three changes. One, adding subsection E to number 1 and re-lettering the subsequent sections. Subsection 1E would state "participation by DOJ in claims under Section 208 of the VRA," with one subsection identifying United States v. Brazos County, Southern District of Texas, 2006, alleging the county failed to ensure that votes who are disabled, blind, or illiterate were allowed to use their chosen assisters.

Two, adding "2B and Section 208" before "litigation."

And, three, adding to 3A "and people with disabilities" before "in the 2016 Presidential election" in the first sentence.

To the outline I propose the following four changes. First, after the Chapter 2 section heading titled "Examine Trends in Section 203 Language Minority Litigation," add "examine trends in Section 208, disability access litigation since 2006 VRA reauthorization."

Second, in the subsection Voter Turnout
and Registration, adding "and persons with disabilities" after "limited English language proficiency" in the first sentence in the first sub-bullet.

Third, in the second sub-bullet of that same subsection, adding "and 208" after "Sections 2 and 203."

In the Chapter 3 section heading titled "Review of Statement of Interests: Objection Letters," add "claims under Section 208 of the VRA" after the first two sub-bullets.

Do I have a second for these amendments?

COMMISSIONER ADEGBILE: Second.

CHAIR LLAMON: Thank you. Are there any other amendments or points for discussion?

COMMISSIONER NARASAKI: Yes, Madam Chair.

I have two.

CHAIR LLAMON: Okay.

COMMISSIONER NARASAKI: My proposed amendments are to the outline. The first one is under Chapter 2, under state actions after the Shelby decision, and it's in the state actions after the Shelby decision, several bullets down where it talks about automatic voter registration and voting by mail.

I would simply like to add voting
registration to make it clear that we're also looking at changes to voting registration processes. As you know, there have been several states who have made it much more difficult to register, and I suspect that there might be problems there.

The second change is under -- in the same section, just to add a bullet that talks about examples of impacts to students of color from not accepting university-issued IDs, and the closure of polling sites such as at Prairie View A&M University.

And there I am not trying to expand it to cover all of the issues around student voting which are not covered by the Voting Rights Act, but simply the intersection where it is where minority students are expressly being targeted. And I believe that would be covered by the Voting Rights Act.

CHAIR LLAMON: Thank you. Are there any other proposed amendments or discussion?

COMMISSIONER ADEGBILE: Madam Chair, I would just like to thank the Commissioners for their flexibility with respect to the date, the proposed date of this briefing. I have some international travel that is going to keep me away from our originally contemplated date. And so I think we're now focused on February 2nd, and I just wanted to
thank the Commissioners for that accommodation.

CHAIR LLAMON: Thank you. Any other discussion? Commissioner Heriot?

COMMISSIONER HERIOT: I just want to say that I think, again, we may be getting into trouble with a too ambitious project here, that when we passed the requirement that the discovery plan be put before the Commission, we actually had in mind something that was a bit more elaborate and more detailed than this, but on a smaller scale project.

And I’d like, in the future, for us to get back to a more focused question than what we have here. But I think the staff has done a good job with what they could do with this, so I will vote in favor of it.

CHAIR LLAMON: I really appreciate the caution and also the history about how we got here. Thank you.

Any other discussion? Okay. I’ll call the question and take a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LLAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I vote yes.

CHAIR LLAMON: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: Yes.

CHAIR LLAMON: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIR LLAMON: Commissioner Narasaki?

COMMISSIONER NARASKI: Yes.

CHAIR LLAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LLAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LLAMON: And I vote yes. The motion passes unanimously.

So now we will discuss and vote on the briefing dates and locations for our two other briefings in fiscal year 2018. I move that we hold the school discipline briefing on December 8, 2017, here in Washington, D.C.; and the hate crimes briefing on May 11, 2018, again here in Washington, D.C. Is there a second?

COMMISSIONER NARASKI: I second.

CHAIR LLAMON: Thank you. Any discussion? Hearing none, I will call the question and take a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LLAMON: Commissioner Heriot?
COMMISSIONER HERIOT: I vote yes.

CHAIR LLAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LLAMON: Commissioner Kladney?

COMMISSIONER KLADENY: Yes.

CHAIR LLAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LLAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LLAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LLAMON: And I vote yes. The motion passes unanimously.

B. STATEMENTS

CHAIR LLAMON: We will now consider the amended business items, beginning with the statement on Charlottesville. I will turn it over to Commissioner Adegbile, who will read the statement so we know what it is that we are voting on.

COMMISSIONER ADEGBILE: Thank you. The U.S. Commission on Civil Rights' Statement on Charlottesville.

The U.S. Commission on Civil Rights expresses its profound dismay over the violent and deadly events in Charlottesville, Virginia, between
August 11 and August 13, 2017, motivated by racial and religious intolerance.

We join the nation in mourning the death of 32-year-old Heather Heyer, who, with many other injured people, was the victim of apparent domestic terrorism motivated by a white supremacist ideology. Ms. Heyer lives now in our national memory as a martyr for racial and religious justice.

We also mourn the deaths of State Trooper H. Jay Cullen, 48, and Berke Bates, a day short of his 41st birthday, who died in a tragic helicopter crash after they were dispatched to monitor the violence in Charlottesville.

As Americans, we are committed to the right to assemble peaceably, but we condemn racial, ethnic, and religious hatred, incitement, and violence. The events in Charlottesville stand as another tragic and painful reminder that an ideology of racial and religious intolerance can lead in an instant to irretrievable acts of violence, death, and suffering.

As a nation, we have marched through legally sanctioned slavery, secession, civil war, reconstruction, KKK terror, internment of Japanese American citizens, Jim Crow, and the civil rights era, in pursuit of equality.
Progress has come only through the courage of individuals, not all of whom are remembered as they should be, and with the resolve of our leaders and the people alike, to stand for the rule of law, equal protection and human dignity.

We urge the United States Department of Justice, the Federal Bureau of Investigation, and appropriate Virginia law enforcement officials to bring any and all people responsible for Ms. Heyer’s killing to justice, and we urge authorities to use all available resources to investigate the other apparent crimes, including any federal or state hate crimes that were committed in Charlottesville last weekend.

In this 60th anniversary year of the United States Civil Right Commission, we all must grapple with the violence in Charlottesville as a bracing reminder that the nation's work to ensure equality is both urgent and ongoing. White supremacy and religious intolerance dishonor national commitments we have forged over time. That is, they demean America and Americans. And violence in the name of these ideologies must be met swiftly and forcefully with condemnation and unwavering and unified response.

Chair Catherine E. Lhamon said, "Every
American deserves to live confident in the expectation that his and her equal dignity will be respected and receive protection from government agencies.

Last week's violence, driven by racial animus, degrades our nation and merits swift, aggressive, and comprehensive federal response."

In America, we live by the rule of law, and the law must prevail in Charlottesville, Virginia, as in any city or town faced with similar violence. Sadly, we know that no law will bring back the fallen, but we live, too, by symbols, and Ms. Heather Heyer stands as a painful but ennobling symbol that our nation must not depart from the fight for equality and human dignity.

In the words of Ms. Heyer's neighbor, "She lived her life like a path, and it was one of justice."

On behalf of the Commission, we urge the nation to rededicate itself to walk that path.

CHAIR LLAMON: Thank you, Commissioner Adegbile. I'll open the floor for discussion. Commissioner Adegbile, do you want to start us off?

COMMISSIONER HERIOT: We didn't have a motion yet.

CHAIR LLAMON: Do I have a motion? I was
having discussion before the motion, but I don't object to a motion.

COMMISSIONER HERIOT: You're supposed to have a motion first. It's just Robert's Rules of Order.

CHAIR LLAMON: Would you like to move?

COMMISSIONER HERIOT: I'll move that we do, but I also have an amendment, so I might not be the right person to move.

CHAIR LLAMON: I don't mind if you move.

COMMISSIONER HERIOT: I'll move that we adopt the statement.

CHAIR LLAMON: Thank you. Is there a second?

VICE CHAIR TIMMONS-GOODSON: Second.

CHAIR LLAMON: Is there any discussion?

COMMISSIONER HERIOT: I move an amendment.

CHAIR LLAMON: Okay.

COMMISSIONER HERIOT: Here is my motion. I move that we add to the second paragraph at the very end the following sentence, "Though we support peaceful protest, and note that most of the counter-demonstrators were peaceful, we condemn violence by anyone, including violence by so-called antifa demonstrators."
CHAIR LLAMON: They don't call themselves that, but they have been called -- anti-fascist demonstrators have been called that.

COMMISSIONER KIRSANOW: Second.

COMMISSIONER ADEGBILE: Sorry. Could you read the statement again, so I --

COMMISSIONER HERIOT: Sure. This is a sentence that would be -- go at the end of the second paragraph. "Though we support peaceful protest, and note that most of the counter-demonstrators were peaceful, we condemn violence by anyone, including violence by so-called antifa demonstrators."

COMMISSIONER ADEGBILE: So is this contemplated to make more clear what the statement, in fact, already captures by suggesting that the rule of law be applied?

COMMISSIONER HERIOT: I think that the statement does not make it clear that there were protestors who were not among the Nazis, among the KKK, which we all of course condemn. But we're coming at it from the opposite direction, and we're also violent.

COMMISSIONER YAKI: This is Commissioner Yaki.

CHAIR LLAMON: Go ahead, Commissioner
COMMISSIONER YAKI: While I certainly understand the motivation of the amendment, that violence by these right-wing groups should not be met by violence.

I sort of express my sentiment of the statement as a whole. I find it necessary, and, to that end, I will support Mr. Adegbile's statement, but I do not find it sufficient. If we were to put anything else in the statement, it should be a strong statement about the lack of leadership and courage and moral authority of the President of the United States in dealing with this situation.

There is no -- there cannot be a situation where the President of the United States says that there are very fine people on both sides. There are no very fine people who are Nazis or identitarians who are in the Vanguard movement, people who train every day to provoke a race war, and try to do just that in Charlottesville.

There is -- there cannot be a place for a President to do anything other than to not just condemn what happened but to lend the full force of the office of the President and the executive branch, not just to prosecute those who became violent,
because violence is their ideology, but to dig them out root and branch, as we have -- as other presidents, other attorneys general did before in history.

This is really where I think the statement could be augmented, but I understand. I would prefer to have a unanimous statement from the Commission. I think I do not -- do not support -- and to that end, I do not support Commissioner Heriot's amendment to this because, if that's the price of unanimity, I am not going to pay it because we know why this happened. We know how this -- why -- how what happened in Charlottesville was deliberate provocation.

You just don't -- the way they -- these people came armed and ready to do violence and battle because that is part of who they are. There are no very fine Nazis. There are no very fine identitarians. There are only people who are dedicated to relitigate a moral cause that was defeated over 70 years ago by the blood and treasure of this country and many other countries throughout the world.

So I would say that I will support the statement as is. I will not support any changes to it. But I would point out that we, as the Commission,
should take to task this President, who has failed abysmally in providing the clear direction and leadership and moral center for this nation in the situation where hate -- hate became the voice, the motivator. It was not intolerance.

Make no mistake about this. This is not racial and religious intolerance. This is an ideology of hatred -- hatred toward people of color, hatred toward LGBT, hatred toward the Jewish community. This is not religious intolerance. This was -- these are people who chanted specific slogans aimed at members of the Jewish faith. These are slogans aimed at members of the LGBT community.

So, you know, this is a good statement. I commend my fellow Commissioner for putting it together. But I've just got to say, it could have gone so much further. And I -- and given the fact that we have a bar now that has been set by people such as Senator Bob Corker and Mitch McConnell that has strong language condemning and questioning the leadership of this President. I just wish we could do the same.

CHAIR LLAMON: Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Commissioner Heriot, I understand your statement, and I know and
understand a little about writing. I'm at a loss to understand why the first sentence in that paragraph doesn't generally cover your concern. It says, "As Americans, we're committed to the right to assemble peaceably, but we condemn racial, ethnic, and religious hatred, incitement, and violence."

Now, granted, that's a general statement, but I just kind of don't see why that doesn't cover your concern. You know, we all write differently. And if I were writing this statement, I wouldn't write it the same way, just as you probably wouldn't.

But consider, again, please, why that first statement wouldn't cover it.

COMMISSIONER HERIOT: I would think that is because, read in context, the statement, as written, makes it very clear that we're condemning one side. And although I don't think it's appropriate to condemn both sides, because there were lots of demonstrators, counter-demonstrators there, who were simply making the point they should make, and that is that they're not going to stand for Nazis, KKK members, and their views, there were some people on that side who were in fact violent. And I think that's important to point out, and the statement does not do so.
CHAIR LLAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: I would oppose the amended language. First of all, I feel that it is covered in the fourth paragraph where it says, "We urge authorities to use all available resources to investigate other apparent crimes, including any federal and state hate crimes that were committed."

Second of all, I feel very strongly that there is a lack of moral equivalency here. And I -- so I have a problem because I feel that that somehow is excusing the people who caused the violence to begin with. I lack evidence, actually, that there were significant numbers of counter-demonstrators who were in fact as violent as those who were in fact inciting the violence to begin with.

So I just oppose it. Sorry.

CHAIR LLAMON: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Yes. So this is an important moment I think for the nation and for this Commission. And I welcome the careful thoughts and thinking of all of the Commissioners, many of whom have given input into this statement that we are trying to negotiate to assure that we can, to the full extent possible, speak with a unified voice at a time when it seems that the circumstances in the country
could reasonably have the expectation that the United States Commission on Civil Rights, to the full extent possible, would speak with one clarion voice.

I think that this statement does not condone violence in any way, of any kind, and I think that's apparent from the language that we have negotiated and that is on the page. I share Commissioner Narasaki's concern that we be careful not to create false equivalencies.

It's one thing not to condone violence, and I think the best and highest traditions of the fight for civil rights in this country have been a disciplined use of non-violence in the face of extraordinary hate and violence. And I think that the marchers went to Charlottesville in the context of that history.

There are some circumstances where protests result in violence, but I don't read anything in this statement as written to condone that violence, and I think it's adequate to address the needs. And on that basis, I will not support the amendment.

CHAIR LLAMON: I also want to be clear, I was raised in the non-violent civil rights tradition, and I strongly oppose violence and strongly believe in non-violent civil rights protest where it is
necessary. I think the statement is an eloquent,
strong, powerful statement of opposition to violence,
opposition to a racist ideology, and a return to the
nation's darkest past.

I, too, oppose any language that would
water down the sentiment that I think is extant in the
statement as crafted, and also that captures
opposition to violence of all types.

COMMISSIONER HERIOT: I would just like to
say that it is not the intention of this language to
water down the sentiments in the statement as a whole.
However, it very much is the intent of the proposed
amendment, my intent, to make it clear that there was
indeed violence by people against the -- I guess I'll
have to call them the Nazis and KKK, and both needs to
be condemned. So --

COMMISSIONER YAKI: This is Commissioner
Yaki.

COMMISSIONER HERIOT: -- I'm happy if you
want to call the question on this.

CHAIR LLAMON: Okay. Commissioner Yaki?

COMMISSIONER YAKI: This is Commissioner
Yaki.

CHAIR LLAMON: Go ahead.

COMMISSIONER YAKI: I am sitting here in
disbelief at this last statement, that the people who
used a car to mow down peaceful protesters --

COMMISSIONER HERIOT: Person.

COMMISSIONER YAKI: -- should find any
comfort in equivalency from the U.S. Commission on
Civil Rights with regard to their actions by casting
blame on people, on groups or organizations that were
out there peacefully protesting. Whether some got
carried away or not, the intent and their motivation
and their ideology is not motivated by hatred. It's
not motivated by violence. And it does terrible
justice to the memory of Heather Heyer and her family
for us to even consider this amendment.

I would hope that Commissioner Heriot and
Commissioner Kirsanow would support the statement as
it has been drafted. I think that it is a good
statement. But if their support for this is
conditioned on that amendment, then I will have no
hesitation in starting to offer amendments of my own.

CHAIR LLAMON: Commissioner Yaki, we have
a packed agenda today, so I'm going to move us to a
vote and just note that Commissioner Kirsanow has now
taken a position, so we shouldn't be speculating about
his position is.

The motion, as amended, is to vote on the
statement with the sentence that Commissioner Heriot has proposed, and I'm going to call for a roll call vote on that motion now.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Nay.

CHAIR LLAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I vote yes, and just want to comment that New York Times reporter Sheryl Gay Stolberg reporting from Charlottesville says, "I saw club-wielding antifa-beating white nationalists being led out of the park."

CHAIR LLAMON: Commissioner Heriot, we're at vote now.

Commissioner Kirsanow, how do you vote?

COMMISSIONER KIRSANOW: Yes.

CHAIR LLAMON: Commissioner Kladney?

COMMISSIONER KLANDNEY: Yes.

CHAIR LLAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: I vote no. And given the fact that we had the discussion last night about whether one should trust everything that's written in the press, I --

CHAIR LLAMON: Again, Commissioners, we at vote.

COMMISSIONER KLANDNEY: This is Kladney
again. I apologize. I voted the wrong way.

CHAIR LLAMON: Oh. So your vote is --

COMMISSIONER Kladney: I vote no.

CHAIR LLAMON: Your vote is no. Okay.

thank you.

COMMISSIONER Kladney: I thought we were voting on the statement. I apologize.

CHAIR LLAMON: Thank you. Commissioner Yaki?

COMMISSIONER YAKI: No.

CHAIR LLAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: No.

CHAIR LLAMON: And I vote no. The motion fails.

Do we want to move to reconsider the statement?

COMMISSIONER ADEGBILE: I would like to move the statement as proposed.

COMMISSIONER HERIOT: That's still a pending motion. That's the way Robert's Rules work. It's still a pending motion. You don't have to remove it.

COMMISSIONER ADEGBILE: Fair enough. Perhaps we should proceed to the vote on the motion that has been moved.
CHAIR LLAMON: Okay. Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LLAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I vote yes.

CHAIR LLAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LLAMON: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIR LLAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LLAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LLAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LLAMON: And I vote yes. The motion passes unanimously.

We will now consider a statement on civil asset forfeiture. As is our tradition, I'll read the statement, so we know what we're voting on. It's titled "The U.S. Commission on Civil Rights Disapproves of the Department of Justice's Civil Asset Forfeiture Policy."

The U.S. Commission on Civil Rights strongly disagrees with the Department of Justice
recent decision to expand federal participation in the practice of civil asset forfeiture. Civil asset forfeiture defined as "the taking of property by law enforcement without a criminal conviction" was sharply curtailed by the Department in 2015.

Efforts to limit the practice have bipartisan support. As Justice Clarence Thomas recently noted, this system, where police can seize property with limited judicial oversight and retain it for their own use, has led to egregious and well-chronicled abuses.

Congressman Jim Conyers similarly stated, "It has increasingly become apparent that the procedures in federal law governing civil forfeiture are inadequate and unfair." With respect to concerns about access to justice, Congressman Jim Sensenbrenner said, "Civil asset forfeiture cases make a mockery of the Constitution."

A recent analysis of Nevada forfeitures shows most seizures of property in that state last year were assets worth less than $1,000, and seizures were concentrated in areas where most residents are people of color and poverty is high.

The high cost of challenging a seizure means there is no practical way to contest the seizure
of such assets. In total, Nevada residents forfeited nearly $2 million in cash and property in 2016. As in other states, law enforcement keeps a portion of this money, which creates an inherent conflict of interest.

Public trust in the police is dangerously undermined when police are perceived to be acting primarily in their own financial interest rather than in the interest of public safety.

The Department of Justice decision to expand federal participation in asset forfeitures means conflicts of interest will be more widespread. Although the Department has included new notice procedures and has promised monitoring in this new policy directive, scaling up rather than scaling back on this practice means more innocent Americans will lose their property.

As Congressman Sensenbrenner put it, "Current forfeiture laws put law-abiding citizens at risk for unwarranted seizures, and the DOJ proposal to expand programs supporting such laws will only make the problem worse."

The Commission has recently investigated similar conflicts of interest, raising serious civil rights and access to just concerns. In our investigation of municipal finds and fees, the results
of which the Commission plans to report in September 2017, the Commission examined conflicts of interest at the municipal level when courts seek first to collect money rather than administer justice.

Testimony the Commission received indicated that civil asset forfeiture creates similar problems, leading to innocent persons losing their property or recovering it only after prolonged legal struggles and undermining public trust in government.

Two of the Commission’s advisory committees, in Michigan and Tennessee, have taken up the topic for review because of civil rights concerns. Civil asset forfeiture has repeatedly been shown to have racially disproportionate outcomes with a greater effect on people of color.

As Justice Thomas has noted, forfeiture operations frequently target the poor and other groups least able to defend their interests in forfeiture proceedings. Chair Catherine E. Lhamon stated, "Every American should have equal access to justice in this country. The Department of Justice should be ensuring the fair administration of justice, not engaging in practices that put this justice in question."

The Commission urges the Department of Justice to heed the many concerns raised about civil
asset forfeiture and limit or, better for justice, end
the practice.

We will now discuss the statement. Is
there any discussion?

I have a friendly amendment to change the
reference to Jim Conyers to John Conyers. Is that
correct?

COMMISSIONER ADEGBILE: I support the
amendment and suspect that the Congressman would as
well.

(Laughter.)

CHAIR LLAMON: Thank you. Do we have a
motion to approve the statement regarding civil asset
forfeiture?

COMMISSIONER ADEGBILE: So moved.

CHAIR LLAMON: Is there a second?

COMMISSIONER NARASAKI: I second.

CHAIR LLAMON: Thank you, Commissioner.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LLAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Aye.

CHAIR LLAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LLAMON: Commissioner Kladney?
COMMISSIONER KLADNEY: Yes.
CHAIR LLAMON: Commissioner Narasaki?
COMMISSIONER NARASAKI: Yes.
CHAIR LLAMON: Commissioner Yaki?
COMMISSIONER YAKI: Aye.
CHAIR LLAMON: Vice Chair Timmons-Goodson?
VICE CHAIR TIMMONS-GOODSON: Yes.
CHAIR LLAMON: And I vote yes. The motion passes unanimously.
COMMISSIONER KIRSANOW: Madam Chair, I seem to suffer from the same disability as Commissioner Kladney. I'd like to revise my vote to an abstain.
CHAIR LLAMON: Okay. Thank you.
COMMISSIONER NARASAKI: I thought you were ruining your street credibility.
(Laughter.)
CHAIR LLAMON: Okay. So correcting our record, the motion passes, one abstention, all others in favor.

We will now consider the statement on the transgender military ban. Again, I will first read the statement, so we know what we're voting on. The title is "The U.S. Commission on Civil Rights Condemns the Announced Military Ban on Transgender
Individuals."

The U.S. Commission on Civil Rights strongly urges the President to reconsider his position as expressed on July 26, 2017, that "The United States Government will not accept or allow transgender individuals to serve in any capacity in the U.S. military." The Commission urges this administration to recommit to the full protection of civil rights for all persons in our country.

Thousands of transgender troops currently serve in the U.S. military, and thousands more have served and given their lives for the country throughout our history. These military men and women honor our country and defend all its citizens with their service.

As a group of retired military officers pointed out, the ban, "if implemented," would cause significant disruptions, deprive the military of mission-critical talent, and compromise the integrity of transgender troops who would be forced to live a lie as well as non-transgender peers who would be forced to choose between reporting their comrades or disobeying policy.

Ironically, 69 years previously, on the very same day, in 1948, President Harry S. Truman
issued an executive order to desegregate the U.S. military. President Truman then correctly recognized that the nation's military strength and efficacy depend on equal treatment of its troops.

He saw that integration, notwithstanding predictable resistance to the change, was not only possible but essential to living up to the American promise of equal treatment of all persons. Retrenchment, seven decades later, egregiously fails to learn from our past.

The President's mere announcement of a ban on transgender military service harms all Americans, by sending a message that fosters and encourage prejudice inconsistent with our core national values. If implemented, the ban would further harm Americans and weaken our defense by enshrining unequal treatment of Americans based on rank stereotype.

Chair Catherine E. Lhamon stated, "Animus has no place in any aspect of American life. All Americans deserve our government's respect and protection, not affirmative harm, from the government itself."

The U.S. Commission on Civil Rights calls on the United States to satisfy the civil rights protections that are the responsibility and obligation
of the Federal Government.

    We will now discuss the statement. Any
discussion? Hearing none, do I have a motion to
approve the statement regarding the military ban on
transgender individuals?

    COMMISSIONER ADEGBILE: So moved.

    CHAIR LLAMON: Is there a second?

    VICE CHAIR TIMMONS-GOODSON: Second,

    CHAIR LLAMON: Commissioner Adegbile, how
do you vote?

    COMMISSIONER ADEGBILE: Aye.

    COMMISSIONER YAKI: I have a question.

    Commissioner Yaki.

    CHAIR LLAMON: Yes, Commissioner Yaki. Go
ahead.

    COMMISSIONER YAKI: Do we know for certain
whether or not there is actually an order on this, or
was it just the President's attempt to distract people
during the healthcare debate by tweeting it out there
without informing any one of the Joint Chiefs or any
of the heads of the Armed Services?

    CHAIR LLAMON: What we know is that the
President has made the statement through Tweet, and
that that statement persists, that the statement --
our statement itself determines that the statement was
announced, and then notes the ways that the announcement itself are harmful and the ways that, if implemented, the ban would be harmful.

COMMISSIONER YAKI: I was just wondering because it's just odd that any President can believe that he will change policy by a Tweet without following the chain of command or the studies or the unanimous opinion of his -- of the public members of his military. But I was just wondering. Thanks.

CHAIR LLAMON: Thank you. We'll proceed with the vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Still aye.

CHAIR LLAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Sorry, I missed the discussion part. What I would say here is that a Tweet is not a policy statement, and so this is premature. I'm going to vote no.

CHAIR LLAMON: You and Commissioner Yaki are in like view on that, it sounds.

Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LLAMON: Commissioner Kladney?

COMMISSIONER KLADEY: Yes.

CHAIR LLAMON: Commissioner Narasaki?
COMMISSIONER NARASAKI: Yes.

CHAIR LLAMON: Commissioner Yaki?

COMMISSIONER YAKI: I agree with Commissioner Heriot, but I'm going to vote yes.

CHAIR LLAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LLAMON: And I vote yes. The motion passes, two Commissioners voted no, all others were in favor.

We will now consider the statement on the National Voting Rights Act. I'll turn it over to Commissioner Narasaki, who will read the statement.

COMMISSIONER NARASAKI: Thank you, Madam Chair. This is raising a concern about a shift by the Department of Justice over policy that has been in place for 20 years through both Democratic and Republican administrations, and through several cases.

It reads, "The U.S. Commission on Civil Rights raises concern about reversal of Department of Justice position on a key voting rights case. The U.S. Commission on Civil Rights expresses serious concern with the Department of Justice's recent change of position in Houston v. A. Philip Randolph Institute, an Ohio voting rights case scheduled to be argued before the Supreme Court during its upcoming
October term.

"Section 8 of the National Voter Registration Act, NVRA, prescribes rules for when state voter registration maintenance programs may remove voters from voter rolls and explicitly prohibit the removal of an eligible voter because of a person's failure to vote.

"Since 1994, the Department has argued the NVRA prohibited states from using a voter's failure to vote for specified period as grounds to send an address verification notice. Under programs like Ohio's, if the voter failed to respond to the notice and failed to vote for an additional period of time, the voter would be removed from the voter roll.

"Although no facts or case law have changed, the Department has now reversed its position citing the change in administrations as the only basis for doing so. This stands open the door to more aggressive and inaccurate purging of voter rolls, which can lead to widespread voter disenfranchisement and suppression of low income communities and communities of color.

"In September 2016, a Federal Appeals Court blocked the Ohio program for violating Section 8. A federal judge allowed purged voters who still
lived in the same county to vote provisionally. The State of Ohio has acknowledged that over 7,500 voters cast votes in the 2016 Presidential election that would have otherwise when purged from the voting rolls.

"This case marks the second high-profile voting rights case where the Department has reversed or withdrawn its position from earlier briefs. The Commission will continue to monitor the action of the administration as part of its previously announced two-year assessment of federal civil rights enforcement, which will conclude in fiscal year 2019.

"Chair Catherine E. Lhamon states, 'The right to vote is fundamental in our American democracy. The Commission will continue to uphold its 60-year mandate to protect that right, and remains vigilant in ensuring the Department of Justice fulfills its own mandate of enforcing federal civil rights statutes.'"

CHAIR LLAMON: Thank you. Now open for discussion on that statement. Is there a second?

COMMISSIONER HERIOT: There has been no motion yet.

CHAIR LLAMON: Hearing none, is there a motion to approve the statement?
VICE CHAIR TIMMONS-GOODSON: I so move.

CHAIR LLAMON: Is there a second?

COMMISSIONER ADEGBILE: Second.

CHAIR LLAMON: Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

COMMISSIONER KIRSANOW: What about discussion?

CHAIR LLAMON: I called for discussion and heard none.

COMMISSIONER HERIOT: But discussions are supposed to go after the motion. The motion is what makes it possible to conduct the discussion. That's what Robert's Rules of Order say.

CHAIR LLAMON: Do you have discussion you'd like to begin?

COMMISSIONER KIRSANOW: Yes. Two things. First, I'm going to oppose --

CHAIR LLAMON: I think your microphone may not be on.

COMMISSIONER KIRSANOW: Here we go. I'm going to oppose this for two reasons. First is it states that, although no facts or case law have changed, and that is inaccurate, when the litigation first began, Ohio's Board of Elections would monitor
the voting rolls, and if there was inactivity in the
voter rolls for two years a postcard would be sent out
asking for confirmation of the person's residency
status.

And that postcard would not inform the
person of the consequences of failure to respond or
what that person can do in terms of becoming eligible
to vote in whatever new jurisdiction that person was
in.

After litigation has begun, the Board of
Elections changed that to now inform the voters of the
consequences of what would happen. That is, if they
did not return the prepaid postcard or vote or
register, they would be purged from the rolls four
years thereafter. So that was changed.

They still do not tell the voter what they
can do in terms of conforming with the eligibility
requirements in a new jurisdiction, but then that begs
the question, how could one state tell a voter how to
conform to the requirements of another state? So
there has been a change.

And the second one is that maintaining
accurate voter rolls is, in fact, essential. Any vote
that shouldn't be had cancels out a vote that
legitimately should be had, and this is an effort to
maintain the integrity of the voting roll in terms of who is eligible to vote in a given jurisdiction.

There have been a number of studies, including the election integrity project, that show that there are three and a half million more people on the voting rolls than there are live adults in the United States. San Diego County, by itself -- you live there, don't you? Has over 800,000 more people on its rolls than are live adults. And that has consequences because we all remember that in the 2000 presidential election in Florida 538 votes decided that election.

Washington gubernatorial election, I think it was 300 votes out of 2.8 million cast decided the election. Here, Virginia's attorney general, 162 votes out of millions cast. So each vote is very important. So I'm going to oppose it for those two reasons. Mainly because of the inaccuracy.

CHAIR LLAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: The change that you note, Commissioner, was actually acknowledged by the federal court who noted, as I do, that that is not actually the issue at hand. What the notice says is actually irrelevant to the policy, and the policy is focused on whether it is sufficient to remove people
otherwise eligible to vote from the rolls simply by mailing anything to them once.

And this is the challenge because the reason why the Department of Justice has taken the position, since it objected to it when Georgia tried to do it in 1994, is because there is a concern, particularly for poor minority communities who have poor mail service, that this will disproportionately be a problem for them.

Immigrant families also tend to live in multi-family households and non-traditional residences, and mail delivery is simply ineffective. And the fact -- I would think that you would be concerned that the fact that 7,500 people who would have been struck showed up to vote and would have been told, "You can't vote" would be more of a concern than the fact that there are dead people on the rolls who clearly aren't trying to vote.

COMMISSIONER KIRSANOW: The fact there are dead people on the rolls or other people on the rolls who may be registered in multiple jurisdictions, there is copious evidence that hundreds of thousands of people are registered in multiple jurisdictions.

There is also evidence where people have admitted they voted in multiple jurisdictions, in
addition to which the posture of this particular case was that the injunctive stage -- in other words, we're not talking about the merit stage -- this change could well have a dispositive impact on the nature of this litigation. For that reason, I say it's, number one, inaccurate; and, number two, it would be, at best, premature.

COMMISSIONER NARASAKI: So, Commissioner, I agree that, obviously, it's important to try to keep the rolls clean, but there is no evidence there is widespread double voting by people who are double registered. And as has been widely reported, although we have already established one cannot necessarily trust the press, even members of the President's family are double-registered. So, and I don't think anyone is accusing them of trying to vote twice.

That's why, in our recent NVRA report on Section 7, we supported automatic voter registration and data management technology, because that will be a better way to clean the rolls. And the Department of Justice has been very clear on how states can better maintain their rolls.

The real criminal is the fact that states are underfunding voter administration and underfunding the ability to upgrade their systems. That's the real
problem here. They shouldn't be doing it in a way that causes people who are otherwise eligible to vote who then can't vote when they show up.

COMMISSIONER KIRSANOW: Just one last point in counter to that. Regardless of whether or not the President's family is double registered, double registration presents a profound problem. It's a problem that has been exploited. There have been a number of individuals in studies who -- that have shown that people do vote in multiple jurisdictions, and one of those votes in unlawful. One of those votes cancels out the vote of somebody else. So that's significant.

In addition to that, and in this particular case, it's not as if there was some draconian purge. The manner in which this happens is a prepaid postcard is sent to individuals after two years of voting inactivity simply saying, "Please confirm that you are a resident of this state," or words to that effect. Then there are several mechanisms by which the person can, in fact, satisfy the request. One is by return of that prepaid postcard within the next four years or voting in the next four years or registering to vote in the next four years.
Nonetheless, what happened in this case is there was a change in the facts, and I would say that it's premature to make a judgment on that until the Supreme Court in fact weighs in.

CHAIR LLAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Commissioner, you must lead a charmed life if you have never had mail go missing in your life. I know I have had several occasions where the mail -- where the post office has simply not delivered.

In addition, there are stories of real people here. Again, I don't know what you call massive purge, but having that many people, 7,500 eligible voters show up who would otherwise have been purged I think is a problem. So I just find it very troubling that the concern is more about dead people than about live people who are trying to vote.

CHAIR LLAMON: Is there any further discussion? Okay.

COMMISSIONER YAKI: Yes. Commissioner Yaki. I would just like to note that the question of the 538 people in Florida could also be mitigated by the fact had Florida not purged thousands of people who actually were registered to vote and were mistakenly struck off the rolls. So it goes both
ways, Commissioner.

CHAIR LLAMON: Okay. Calling the vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LLAMON: Commissioner Heriot?

COMMISSIONER HERIOT: I vote no.

CHAIR LLAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LLAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LLAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LLAMON: Commissioner Yaki?

COMMISSIONER YAKI: Aye.

CHAIR LLAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LLAMON: And I vote yes. The motion passes, two Commissioners opposed, all others were in favor.

We are four minutes before our scheduled speakers at 11:00, so we will recess until 11:00 a.m. and return to hear from our speakers about the history of voting rights in this country.

(Whereupon, the above-entitled matter went off the record at 10:56 a.m. and resumed at
11:00 a.m.)

CHAIR LLAMON: We're back on track for our 11:00 a.m. presentation.

E. PRESENTATION ON HISTORY OF VOTING RIGHTS

CHAIR LLAMON: We are now turning to our historical presentation scheduled for today, which is a historical perspective on 52 years of the Voting Rights Act.

President Johnson signed the Voting Rights Act of 1965 into law 52 years ago this month on August 6, 1965. It is widely considered to be one of the most significant and successful pieces of civil rights legislation ever enacted and has been used to combat varied voter suppression tactics, particularly targeting communities of color and limited English proficient voters.

I am especially proud to highlight the Commission's role in the creation of that landmark legislation. In the years leading to the passage of the Voting Rights Act, the Commission held a number of hearings and issued reports on voting rights abuses.

In March 1965, President Johnson called for the new voting legislation embodying the recommendations of the Civil Rights Commission. Then, in State of South Carolina v. Katzenbach, the Supreme
Court rejected a challenge to the constitutionality of the 1965 Voting Rights Act, in part relying on data published by the Commission.

Since our first report on voting issues in 1959, we have issued 20 reports on voting rights, most recently last fall on issues with the National Voter Registration Act. Voting rights has been, and continues to be, a central part of our Commission charge and work.

I also note that today, August 18, marks the 97th anniversary of the ratification of the 19th Amendment to the United States Constitution, which gave women the right to vote.

As my mother and grandmother have often reminded me, people died for the right for people like me, black people and women, to vote. That right is precious, it is fundamental, and it is my deepest honor to safeguard it here.

We are so grateful today to have with us historians who bring a wealth of knowledge about the particular history of voting rights in the United States. I note that one of our historians has not yet arrived, but I'm delighted that our second is here and we will begin with her.

She is Professor Mary Ellen Curtin, who is
an associate professor with the Department of History at American University. She specializes in voting rights and has written extensively on modern African American and women's social and political history.

After receiving her Ph.D. in history from Duke University, Professor Curtin worked at universities across the country and abroad while lecturing on American history and focusing her research discipline.

In 2000 and 2010, she was awarded multiple public policy fellowships with the Woodrow Wilson International Center for Scholars here in Washington, D.C. Professor Curtin's first book, "Black Prisoners and Their World: Alabama, 1865 to 1900," was a study of convict labor in the new south.

Her forthcoming book, "Reaching for Power: Barbara Jordan and the Politics of Race and Sex in America," recounts the life of Barbara Jordan, a firm defender of voting rights and the first black woman elected to Congress from a southern state.

The book will highlight Congresswoman Jordan's key role in the 1975 Voting Rights Act reauthorization bill and her long history of campaigning for women and minority suffrage in Texas.

So I'm just going to give the biography of
Alexander Keyssar, who will also present, we hope, when he arrives. He is the Stirling professor of history and social policy at the Harvard Kennedy School of Government, a Harvard trained historian. Professor Keyssar specializes in voting rights and election law history, as well as comparative working class history. Before joining the Harvard faculty, Professor Keyssar also taught at Duke, Brandeis, and MIT.

His acclaimed book, "The Right to Vote: The Contested History of Democracy in the United States," details the history of the franchise from the American Revolution to the 21st century. The book examines voting rights against the backdrop of various social dynamics, including changes in economic development, immigration, and class relations, to identify major periods in suffrage movements.

Professor Keyssar's historical account received widespread praise from academics and popular audiences and was awarded annual and biannual recognitions for best book on U.S. history from both the American Historical Association and the Historical Society.

Before hearing from our distinguished speakers, I turn to Commissioner Adegbile at whose
suggestion we commemorate the Voting Rights Act Month today. And we welcome Professor Keyssar.

COMMISSIONER ADEGBILE: Good morning. Welcome to both of our historians. Thanks for joining us today.

When I think back to 52 years ago, and Selma, Alabama, and the bridge that brave, non-violent citizens put themselves on for this right that we're discussing today, I think about it as a bridge that took people across a river, but I also think about it as a bridge that took a society from one state of affairs of exclusion to a need and a demand that the nation live up to its promises in the Constitution.

And when President Johnson went before a dual session of Congress to announce that he would be moving a Voting Rights Act bill, I consider it to be one of the most important civil rights speeches that has ever been given in our country's history.

And I commend that to all who are listening today, to go back and listen to the video or to read those words because they have resonance today just as they did and moved the Congress and the nation on the strength of the demonstration made in Selma and elsewhere, that the right to vote, as the Supreme Court has said, is preservative of all other rights,
and a right on which we place special significance.

So it's important today that we hear from two people who know this history, who have chronicled it, studied it, shared it with students and others in the nation, and we're delighted to have both of you with us today to share with us a bit about how we've come to this point, and a bit about the history of voting that we need to remember and hold at the foremost of our attention.

Thank you.

CHAIR LLAMON: So, Professor Keyssar, we'll start with you first. Welcome.

DR. KEYSSAR: Thank you, and thank you very much for the invitation to --

CHAIR LLAMON: I think your microphone is not -- there we go.

DR. KEYSSAR: Can you hear me now? You could probably hear me anyway.

But let me begin by thanking you. It's truly an honor to be invited to speak to this group, and I will do my best here. I apologize for getting here a little belatedly. I was actually lost in this building --

(Laughter.)

DR. KEYSSAR: -- in several different parts
of this building.

CHAIR LLAMON: I don't want to tell you what good company you're in for that.

(Laughter.)

DR. KEYSSAR: Well, I'm glad to hear, because, frankly, I felt like an idiot. But, anyway, here I am.

What I thought I could most usefully do given the work that I've done would be to make some comments about the long sweep of voting rights history in the United States, and then try to locate the Voting Rights Act in that long sweep, and then bring it into talking about some dimensions or suggesting for discussions of dimensions of the present in light of that past.

So let me begin by talking about some broad patterns in the history of voting rights, which may or may not be evident to everybody here. But let me begin with the founding, the original sin of the Constitution is that the Founding Fathers separated suffrage from citizenship. Okay? There is no right to vote in the Constitution, and they did not tie it to citizenship, something which, by the way, in any modern constitution in the world, any constitution that has been written in the last 80 years, is done
and is automatic.

But they separated it not for reasons of principle or political theory. It had to do with the pragmatic politics of constitutional ratification in the 1780s. They were afraid that any standard that they picked would annoy somebody, and so they might not vote for ratification.

So we start there, and that obviously decentralizes suffrage rights, leaves things to the states, with immense consequences because the states are then free, within limits that are imposed, to disenfranchise the people that any given state would like to disenfranchise. So that's proposition 1.

Two, the history of voting rights since the founding, and despite our most heroic images of our country, has not been one of continuous expansion and enlargement. Although, on balance, there has been progress, what the chronology reveals is that there have been periods in states and nationally when the franchise has contracted as well. Okay?

This has varied by state, but it is a broad, broad set of patterns. There is an expansive period from 1790 to roughly 1870, the 15th Amendment, but even there, there are many exceptions. African Americans get disenfranchised in most northern states
between 1790 -- or between 1800 and 1850.

Women could vote in New Jersey for a while, until they couldn't. Paupers in a number of states during this period lose their right to vote; anyone who is dependent on the state loses their right to vote. But, still, this is an expansive period.

Then there is a broad period of contraction. From 1870 or the 1870s into the progressive era, north and south, is a period when voting rights contract. Now, the southern story there is well-known. You know, we do this, but there's no harm being reminded about it again.

But there is also a northern story in which immigrant workers lose the right to vote due to what we now call voter suppression, putting obstacles in the path of voters. By the way, there are two periods in the history -- if you do word searches, the 1880s is one peak of the phrase "vote suppression," and the recent years is the second peak.

So you have a contraction period, you have a broad expansion from World War II into the early 1990s, another big period of expansion, and then I would argue that we are now living in a period of a contraction of voting rights.

And there are a number of different signs of
that, even though it's in an era of formally and 
ideologically full enfranchisement, I think this is a 
period when voting rights are more under threat than 
the opposite.

Now, what this chronology reveals, if you 
take seriously the notion that it's not an upward 
path, but that it's sort of -- that it's up and down, 
one thing it reveals is that the history of democratic 
rights is a history of conflict. It's always a 
history of conflict. There are almost always some 
people who oppose the enfranchisement of others. They 
don't want -- you know, not everybody wants everybody 
to participate.

Second, people have periodically lost the 
right to vote, either through outright 
disenfranchisement or through what we now call voter 
suppression. There is a difference between the two, 
but in some sense politically voter suppression is 
what you do when you want to disenfranchise people who 
can't.

The third point, the conflicts and patterns 
of exclusion have always been along the lines of race, 
class, and for a long time gender. Nobody has ever 
attempted to disenfranchise upper or even middle class 
white males. It simply hasn't happened.
A lesson from there, if you take this pattern, again, seriously, is that if you want to preserve voting rights, you have to protect them. It's not automatic. And here one can think of Justice Ginsburg's reference in the Shelby case in her dissent to, you know, it's like taking -- getting rid of your umbrella because you're not getting wet. You need the protections.

Now let me shift the spotlight to the Voting Rights Act and try to locate this also in maybe a somewhat unusual and broad perspective. First, the subtitle of the Voting Rights Act I think is something we always have to sort of keep in mind, which is it's an act -- the subtitle is "An Act to Enforce the 15th Amendment." The 15th Amendment had been on the books for a century when the act was passed to enforce it.

So the Voting Rights Act is not legislation that is dealing with a new problem. It's dealing with a problem that was at least a century old. And the idea of passing a federal law that would throw the weight of the government behind enforcing the 15th Amendment was not new, and here let me mention the arcane history -- again, maybe known to some, not to others.

The Voting Rights Act had a precursor. It
was called the Federal Elections Bill of 1890. It looked a lot like the Voting Rights Act. And it was also known by its opponents as the Lodge Force Bill.

It was passed by the House, and it was killed in the Senate narrowly, in part by a filibuster. It would sent marshals into the south. It would have done a lot of what the Voting Rights Act did.

So the need for something like that was apparent in 1890, and it came very close to being passed. And just imagine how our history would have been different, effectively, if the Voting Rights Act had been passed in 1890.

And although we -- keeping how close that decision was, and we celebrate the immense importance of the Voting Rights Act, and rightly so, and we tend to regard it in retrospect as a national commitment. But we also have to remember that there was a filibuster of the Voting Rights Act, and that the filibuster was overcome. The cloture vote succeeded by only three votes. So that history could have turned out rather differently also.

I think we also need to keep in mind, another little dimension that I want to put on the table, is that strong opposition to renewal of the
Voting Rights Act occurred in 1970, just five years after it was passed. There was a major battle in Congress over this, and at the heart of that battle was the desire of many southern members of Congress, as well as the Nixon administration, and some conservatives from elsewhere, what they wanted to do was to get rid of the pre-clearance provision. This is the renewal in 1970.

The House actually passed such a measure, and it took a lot of deft negotiating on the part of members of the Senate to prevent it from happening. So, again, putting these things in context, that means that the decision in Shelby achieved a goal, which is getting rid of the preclearance provision that had been on some agendas for more than 40 years already. Okay. This wasn't an idea that suddenly popped up. This had been around for quite a while and was on some people's minds.

And when you look from the Federales Elections Bill to Shelby, you have more than 100 years of struggling with the same issues, which -- the same question, which is, what ought and can the Federal Government do to prevent states from denying political rights to some of their own inhabitants?

Finally, let me dash into a few final
comments about the present, and I mean these comments
to be suggestive and hopefully to provoke some
discussion, which is about why we seem to have entered
a new period of contestation in recent years. And
there are multiple reasons. I just -- I want to
suggest a certain kind of historical framing to it.

There are, of course, partisan reasons about
why this happens. This is true throughout our
history. Political parties, shockingly, sometimes act
in their parties' interest, and not in the nation's
interest. It's true of both parties historically, and
it's an era of close elections. I take that as a
given.

I mean, I think that history actually also
offers us a guide, some suggestions, that can help us
understand it, in that there are two striking
parallels between the last 20 years of our history and
the period of the late 19th and early 20th century,
which was a period of contraction of the right to
vote.

The first was that that period of
contraction took place in the wake of a major
expansion of the franchise to African Americans, okay?
It takes place in the wake of Reconstruction, okay?
After Reconstruction and after the passage of the 15th
Amendment.

Second, it was a period of unprecedentedly high rates of immigration, and particularly high rates of immigration of peoples who were regarded as not as assimilable. In that case, it was southern and eastern Europeans as opposed to the migrants from northern and Western Europe who come in the pre-Civil War period.

It's against that background of immigration and African American empowerment in some places that the nation witnessed the passage of innumerable state laws designed to limit the political power of African Americans and immigrants and immigrant workers -- literacy tests, understanding clauses, detailed registration requirements, proof of citizenship laws, as have shown up again in recent years, all of these things that have appeared in the late 19th and early 20th century, and they worked in a lot of places, and, again, not just in the south where we do know the dreadful story.

What's less well-known is that New York State, for example, passed an English language literacy requirement to vote in 1921, and it remained on the books through the 1960s; among other things, making it impossible for Puerto Rican-born, Spanish-
speaking residents of New York, of whom there were hundreds of thousands, to vote.

The parallels I think to our recent history are quite evident. We are also living in a period that follows a period of African American -- of a growth of African American participation and enfranchisement after the Voting Rights Act and other developments of the 1960s.

And we have been seeing extremely large ways of immigration, this time also from a "new place," a different new place, and now it's from Mexico and Central America. And this has been followed by another wave of legislation designed to put obstacles in the path of people trying to vote.

I don’t think that that's a coincidence. I don't think that these historical parallels are coincidence, but that's something which we would likely want to talk about.

Thank you very much.

CHAIR LLAMON: Professor Keyssar, thank you very much.

Professor Curtin?

DR. CURTIN: Well, thank you very much for having me here today, and I am here, as a good segue from Alex's end, to talk about Barbara Jordan and the
extension of the Voting Rights Act in 1975 and her role in that.

So on July 25, 1974, Congresswoman Barbara Jordan said the following about the U.S. Constitution.

I can't say it as she did, but I'll do my best. "When that document was completed on the 17th of September in 1787, I was not included in that We, the People. I felt somehow for many years that George Washington and Alexander Hamilton just left me out by mistake. But through the process of amendment, interpretation, and court decision, I have finally been included in We, the People.

America's history of slavery and white supremacy and then its change to racial inclusion and legal equality gave Jordan a special stake in making sure the Constitution was upheld. "My faith in the Constitution is whole, it is complete, it is total, and I am not going to sit here and be an idle spectator to the diminution, the subversion, the destruction of the Constitution."

When Jordan spoke those words, the nation was in the midst of an impeachment crisis. One year later, in the summer of 1975, President Ford had seamlessly taken the place of the disgraced Richard Nixon, but Jordan and others in Congress believed the
nation faced another potential crisis, one that threatened to undo the most important piece of legislation to come out of the civil rights movement, the Voting Rights Act.

The 1965 Act, which indeed was a key part of the process of amendment interpretation and court decision that Jordan had referred to, allowed federal deputies to register voters. And Section 5 of that Act placed changes in voting procedures in six southern states and portions of several others under the oversight of the Justice Department.

Before the Voting Rights Act, there were only 72 black elected officials in the entire south. By 1975, there were 900. By opening up registration and scrutinizing state practices, the Voting Rights Act was beginning to transform American democracy, but it was due to expire on August 6, 1975.

Jordan was determined not only to renew the Act, but also expand it to permanently ban literacy tests, incorporate language minorities, include the State of Texas under the oversight provided by Section 5, and extend it for 10 more years.

Many seasoned politicians and lobbyists believed expansion was a risky strategy, that it might cause the bill to fail altogether. But over the
objections of many Texas politicians and Congressman, Jordan joined forces with Representative Herman Badillo of New York and Representative Edward Roybal of California to push through a bill that renewed the Voting Rights Act and set it on a new course.

You've asked me to speak about the historical context of why Jordan supported the '75 Voting Rights Act and sought to include the State of Texas and language minorities. But in order to do that, we have to step back a few decades in America, and we have to step back to the 1940s.

Barbara Jordan was born in Houston, Texas, in 1936, in a very stable, working class, Baptist family. And she learned about politics at the Good Hope Missionary Baptist Church located in Houston's 4th Ward, otherwise known as Freedman's Town. Until she left Houston to attend law school in Boston, Jordan grew up listening to the preaching of one individual, the Reverend Albert A. Lucas.

Six feet tall, stout, with a commanding voice, Lucas was an ordained minister educated at nearby Conroe College and Fisk University. During the Great Depression, Lucas was asked to lead the small flock of Good Hope, and within a short amount of time he built up a 2,000-member-strong congregation with a
new stone church that dominated a city block.

Reverend Lucas, along with his wife, Rena, turned Good Hope from an acorn to an oak. Lucas also fought for racial equality. He joined the NAACP, and in June of 1941 invited that organization to hold its annual convention at Good Hope. Hundreds of black Houstonians attended the conference sessions each day, and the theme for that year: voting rights.

NAACP Secretary Walter White made one of the most moving speeches, referring to a young black man who had been lynched just two days before in neighboring Conroe County. He thundered, not only was Bob White killed, but the law was slain. "We are believers in practical democracy," he said. We want to help stop Hitler because we hate Hitlerism, but we hate Hitlerism more than some other Americans because we hate Hitlerism not only in Nazi, Germany, but we hate it also in Conroe, Texas.

"Politicians," he said, "whipped up white fears out of self-interest." This callous use of racism to win elections enraged White, and he said, "That is why it is so important that this present fight against the white primary should be won."

Now, the white primary was an extremely effective disfranchisement tactic. If they paid their
poll tax, blacks in Texas could vote in the general election, but they could not vote in the Democratic Party primary because the party was allowed to exclude black voters from membership.

For many black voters with limited educations, this was a very confusing situation. The librarian from the Good Hope Church recalled that, because a lot of the people would say, "Well, we're paying our poll tax, and we're voting." They did not realize that there was anything wrong until Reverend Lucas brought it to the forefront.

"They have already chosen the candidate," he told his congregation. "Your vote does not count. It does not mean anything."

"That's what he kept hammering on," she said.

So he would say the primaries controlled by these states' righters, white people, controlled by these men, and they are not allowing you to vote.

Legal arguments that the white primary violated the 14th and 15th Amendment had gone nowhere, but white and the NAACP Convention revived the fighting spirit of Reverend Lucas and his congregation. A new plaintiff, a black dentist, from Good Hope by the name of Lonnie Smith, sued county
officials for the right to vote in the primary.

Over the next few years, Lucas and Smith pushed Good Hope's working class congregation to raise their voices for democracy by emptying their purses. The maids, cooks, chauffeurs, and workers in the Houston Ship Channel raised the equivalent of $150,000 in today's currency, and they gave it to Thurgood Marshall and the NAACP to argue against the white primary and the Supreme Court.

I am sure you know that in 1944 the Supreme Court decided in Smith V. Allwright to end the white primary, a decision of comparable importance to Brown. But you might not know that the plaintiff and the money to support the case came directly out of Barbara Jordan's church in Houston, Texas.

After the victory in Smith, Thurgood Marshall described the crowded excitement at Good Hope. "Mass meeting on the night of the 11th was the largest meeting I have seen in Texas," Marshall wrote. "The church was packed at 7:00 for an 8:00 meeting. The crowd outside was as large as the crowd inside. The only way the plaintiff could get in the church was by climbing through the window at the back of the church."

Marshall had a feeling about what the Smith
decision might mean for the south. Don't know about other states, but I bet even money that Negroes in Texas are going to vote, and they did vote. Two years later, a record number of African Americans voted in the state Democratic primary.

Ending the white primary was a necessary start to making the black vote meaningful in Texas and in the south. But every movement forward for black voting rights was also pushed back. What political scientist Chandler Davidson called anti-democratic contrivances hugely impacted black voting in Texas.

These devices included the poll tax, annual registration, at-large elections, gerrymandering, exorbitant filing fees, violence, and economic intimidation. The impact of these practices had been to squash "effective political participation on the part of lower income people in general, and negroes in particular."

The Democratic Party was still run by those opposed to black equality. Discouraged citizens withdrew from voting and were sometimes accused of complacency. Under such circumstances, certain of defeat, who would be brave enough, bold enough, to run for office?

Well, in 1959, Barbara Jordan returned to
Houston after finishing law school at the age of 23. She passed the Texas and the Massachusetts bar exams, and then she joined a coalition of liberals, labor organizers, and black and Latino activists, who sought to change the Democratic Party away from its racist past.

She went to work for the Kennedy campaign. Her job: get black volunteers to register more voters. One organizer remembered where she was really great was recruitment. She would go to a church and make one of those speeches, and we'd have volunteers running out of there, people volunteering to be registration clerks, and the results were phenomenal. "From 15,000 black registered voters," he said, "we wound up with over 60,000 registered to vote."

Jordan had two goals -- get Kennedy elected and make black voters a powerful block in the liberal coalition. She joined a statewide effort to overturn the poll tax in Texas. She ran the Houston operation and got many volunteers from her church, Good Hope, to go door to door.

Many of these same poll workers later became her supporters. When she ran for state representative in 1962 and '64, however, she lost. In Texas, at-large voting had replaced the white primary as one of
the obstacles to electing black representatives.

Blacks could now vote in the primary, but under the at-large system Jordan had to run in a district comprised of over a million people. Black voters came out for her, but given the size of the district, they were too small a minority to elect their candidate.

Here she is testing before Congress: "My first attempts to become a member of the Texas House of Representatives were thwarted by the same type of discriminatory voting practices forbidden by the Voting Rights Act. In 1962, when I first ran for the Texas House, Harris County was not divided into single-member districts. I had to run at-large against all other candidates. I lost and I lost again in 1964. I could not get elected in at-large elections."

Jordan was discouraged. She could not get elected to the Texas House, and there was only seat for the Texas Senate, because urban areas like Houston with large populations were given the same number of representatives as rural areas with very small populations.

But in 1966, the Texas legislature was forced to reapportion itself. In Reynolds v. Sims,
United States Supreme Court applied the one-man-one-vote rule to state legislative districts. Population, rather than area, determined the number of representatives, and Houston was reapportioned, creating a new single-member state senatorial district where Jordan lived. She ran and she won. "Absent the Supreme Court ruling, I would have lost again," she testified.

Jordan never forgot the difference that single-member districts had made to her life and to her constituents. "We needed a victory," she stated. "This is the only way. We've been talking a long time, but they always come back and say, 'We don't see anything. We don't win.' A victory in a body like the State House will do more to help the Negro recognize his voting strength than anything I can think of."

When she made it to Congress, then, she was determined that minority candidates should no longer be thwarted by at-large districts and other discriminatory practices. And when the 94th Congress reconvened in early 1975, to start its new session, the inclusion of language minorities, however, was not part of the draft plan for the renewal of the Act sent to Don Edwards, the Chair of the Civil Rights
And with only seven months left until the expiration of the Act, Clarence Mitchell, the lobbyist for the NAACP, supported renewal without change. He wanted to avoid a drawn-out battle that might endanger the law altogether.

But Jordan thought differently. After talking it through with her legislative aid, she decided that she was going to push for Texas to be included and for language minorities to be protected under the Act. And on February 19, 1975, she introduced legislation extending the provisions of the Voting Rights Act of 1965 to include Texas, New Mexico, Arizona, and parts of Colorado and California.

Her bill would guarantee that Mexican Americans residing in the southwest, and to blacks and Mexican Americans in Texas, the same protection of their voting rights afforded to blacks in the south.

Jordan asserted that all forms of voting discrimination suffered by blacks in the south were also being suffered by Mexican Americans in the southwest. The most egregious violations happened in Texas, and it was more than just the lack of bilingual ballots. When Mexican Americans tried to register in one town, they were told the register ran out of
printed forms. Polling places were located in white-
only spaces.

There were instances where Mexican American ballots were challenged for no cause. There was also
evidence in later testimony of Mexican American voters
and activists suffering economic punishment, losing
their jobs and bank loans, and even suffering violence
as a result of running for office.

Jordan proposed the following triggers. A
jurisdiction would be covered by the Voting Rights Act
if, first, less than 50 percent of the eligible voters
were registered to vote; and, second, if more than
five percent of the eligible voters are of a single
mother tongue other than English. And under that
condition, all of Texas would be placed under the pre-
clearance provisions of Section 5.

Jordan got the Congressional Black Caucus to
support the bill, but there was real opposition on the
Civil Rights Subcommittee. One amendment would have
excluded Texas on the grounds that, gosh, suddenly the
state legislature had hurried up and passed a
bilingual ballot law. But Jordan was not impressed.
"We need more than bilingual ballots," she said.
"That won't solve the problem of political, economic,
and invidious forms of discrimination."
Knowing that they could appeal to the Justice Department was a lifeline to Hispanic voters in Texas. "The minority voters need the psychological, spiritual, and emotional boost that comes from knowing that you have a forum for correction of abuses," she said.

Another amendment by California Republican Charles Wiggins would have allowed states to escape coverage under the Act, if more than 50 percent of blacks voted in the previous election. Jordan looked directly at Wiggins and said that an over 50 percent black turnout did nothing to effect discriminatory problems, such as school boards which have been abolished or reduced to prevent minority membership on them, multi-member districts, polling places removed without notice, and annexation by cities and counties in an effort to dilute minority votes.

The issue at hand, in other words, was not solely about voting. The Voting Rights Act was also about whether the votes cast by minorities were meaningful, fair, and led to real representation.

Jordan took the time to sit down personally with every member of the Texas delegation and explain to them what this meant in factual terms, and to help them understand from a policy point of view why she
was doing this. And according to her aide, all she was saying was, "Don't have a gut reaction, know what you're talking about, and if you try and debate me on this, I'm going to run all over you." In effect, she was also telling them, "This is important to me."

After 13 days of hearings and 48 witnesses, the House passed Jordan's version of the bill, and The New York Times noted that, in a congressional season most noted for its failed promises, at least one measure passed by the House. The extension and enlargement of the Voting Rights Act stands out as a memorable achievement.

In July, the Senate Democratic leaders faced a bitter dispute with southern legislators in the Senate. The opposition, including Strom Thurmond, accused the bill's supporters of using steam roller tactics to get it approved. But it must be noted that ultimately the bill passed overwhelmingly in both the House and the Senate, with bipartisan support, including that from President Ford.

Now, today we might look back and think, if only we could achieve racial equity by abolishing the white primary, or at-large elections, or putting bilingual balance, how simple that would be. But circumstances change, and history shows that with
every step forward new and more sophisticated methods of voter suppression can and will emerge.

All of her political life, Barbara Jordan worked not just for the right of minorities to vote, but for those votes to be meaningful and for minorities to be fully protected by the Constitution.

For Barbara Jordan, the Voting Rights Act and Section 5 and language provisions were essential to her vision of what the Constitution demanded if everyone, indeed, was going to be included in We, the People.

Thank you.

CHAIR LLAMON: Thank you very much, Professor Curtin. I'm going to open for questions from my fellow Commissioners. These were just terrific presentations. Commissioner -- Vice Chair?

VICE CHAIR TIMMONS-GOODSON: I thank both of you for joining us. I have been absolutely mesmerized by all that you have said.

Turning to you, Dr. Curtin, we are indeed living in, as some would say, some interesting times. I'm just curious if you have any thoughts about what Barbara Jordan might say given the issues that we're now facing in terms of voter suppression.

You've alluded to the fact that the techniques and what we're seeing are more
sophisticated. I wonder if you might offer any thoughts on what she might say.

DR. CURTIN: You know, it's really very intimidating to think about, you know, how Barbara Jordan would respond. But I think, again, she would draw on her own history and on the broader history of voter suppression going back to the white primary. I think it's very important because people thought, oh, job done, right? Now we can help elect the candidates.

But that wasn't the case at all because, you know, other measures then emerged to keep people from electing the representatives of their choice. And for her, I think it was always what the Constitution demanded was protection for people, so that they would be able not just to vote because we know that voting can happen in very oppressive regimes, right?

But the idea is that the vote needed to be meaningful, and it really did need to have an impact, show that -- allow people to elect representatives of their choosing.

So I think however that occurs, she would support.

VICE CHAIR TIMMONS-GOODSON: Thank you.

CHAIR LLAMON: Commissioner Narasaki?
COMMISSIONER NARASAKI: Thank you, Madam Chair. I appreciated your effort to try to cram the history of voting into only a few minutes. It's quite a challenge. I just wanted to note that there was another way that people were prevented from voting, and that was simply by not being allowed to be a citizen.

As you know, with both Native Americans who were citizens, not citizens, and then also my grandmother, who for over 50 years after she immigrated was not allowed to become a citizen because she came from Japan. So I think that it's important to note that there is many ways, and ever-inventive ways that unfortunately this country has sought to keep all of its people from being able to vote.

I also wanted to ask Ms. Curtin a question, because I have always been curious. One of the first things I did when I came to Washington was work on the 1992 amendments to the Voting Rights Act, specifically the expansion of Section 203, which was the language assistance provisions.

And, you know, I was not surprised that Latinos were covered. But at the time when -- in the 1970s, the Asian American population was still fairly small. And I'm wondering if you have any insights as
to how Asian Americans came to be covered. I have always been curious.

DR. CURTIN: I think they were included in that -- under the five percent trigger, depending on where they lived.

COMMISSIONER NARASAKI: Is that -- yes, they were covered, but they are expressly named because the trigger only affects named groups. So that's why I was interested in how did Asian Americans become one of those named groups?

DR. CURTIN: Right. I think it had to do with, again, when they first did the trigger and they ran the numbers, a lot of language groups turned up that weren't supposed to, right? Or people that had not previously experienced discrimination, like French-speaking folks in, you know, Maine, you know, a place like that.

So I think they had -- they felt like they had to limit it somehow. So certain language groups -- it wasn't just Spanish-speaking, and this was also different -- difficult because, you know, for the first time you were designating specific groups, which the Voting Rights Act hadn't done before, right?

It was just these triggers, and it didn't have a specific race or -- so I think it was through
negotiation that they wanted to -- they didn't want to make it too broad, but they wanted to include -- I think California was a concern.

So that is an excellent question, and I'll try and dig more deeply into exactly how -- who came up with that list. But I think, you know, it's like making salsa. I mean, like who knows like what negotiations took place to include and exclude others.

I know that this was certainly an issue for certain groups with Native Americans. Certain states did not want, you know, to include those ballots. Others were more open to it.

COMMISSIONER NARASAKI: Thank you.

DR. CURTIN: Yes.

CHAIR LLAMON: Commissioner Adegbile?

COMMISSIONER ADEGBILE: Professor Keyssar, thank you very much for your presentation. I have a couple of questions for you.

One is, to the extent that voting -- the voting story in America has been one of ebbs and flows, as opposed to a unidirectional march forward, viewed through a historical lens, can you speak to what the responses have been that have helped turn the direction from a retreat to greater inclusion?

And then, separately, I think that some of
your writings have focused on an often-overlooked point that expansions in voting have sometimes followed military conflict and war. And to the extent that we have been in a sustained period of military conflict, I'm wondering if the present circumstance that you describe, as against that historical pattern, is a discontinuity. That is, that right now we're not increasing or expanding, but we are retreating.

And then separately, for Professor Curtin, I am fascinated by the fact that we have marched through the white primary President LBJ's role, Barbara Jordan, the Northwest Austin case, a federal decision just this week in Texas. Why is Texas so centrally situated in the American story of voting?

And so I put those questions to our distinguished panelists for their views.

DR. KEYSSAR: Let me first start with the war issue. And for those of you who have not yet mastered the hundreds of pages I've written about this, one of the arguments of the book that I wrote about this is that every major expansion of the franchise that has occurred in the United States has occurred during or just after a war. Every single one of them.

And I try to explain the pattern, and I
think, if my explanation is right, I think it may shed some light on what is happening there because the reasons for expanding the franchise were, for one thing, you wanted to recruit an army. And there are a number of incidents in the course of U.S. history where, starting with the War of 1812, the militias in the War of 1812 say, "We come together. They want us to fight, but they're not letting us vote because we have property requirements." And, you know, they turned in a petition of 1,200 people. Basically, they are threatening not to fight.

So war requires, you know, sort of -- conducting a war requires military mobilization and it requires mobilizing a certain amount of civilian support for the war. And that's the case, for example, with World War I and the enfranchisement of women.

You know, Woodrow Wilson goes to the Senate and says, "You have to pass the 19th Amendment as a war measure," because he doesn't want -- you know, there was tumult in the streets not far from here going on over women's suffrage.

And I think that what we're seeing, you know, ways -- that are disturbing in a number of ways is that in recent years the United States has been
engaging in some prolonged wars without popular mobilization. And we have a volunteer Army and not a draft, and without much in the way of mobilizing citizen support either. So it is different from the historic pattern and worrisome.

On your first question, and then I'll turn it over to Mary Ellen, on your first question about what kinds of things have made it possible to reverse periods of reversals to fight back. You know, what a shocking question to be asking in this day and age.

I think that, you know, there is no unusual magic bullet. People start organizing. They also, you know, try to use the courts. And the other dynamic that occurs, though, and I think -- I think this is a dynamic that we're going to see, okay?

And maybe we're starting to see it in a couple of places, which is that, I mean, you have to organize and you have to use the courts, however difficult it is in some respects to use the courts now, but you have to do real mobilization and helping people and dealing with voter ID laws.

But there is a partisan dynamic which at first kind of worked -- can work in favor of suppression, but then can be turned. And what happens there is that if -- if you are a political party and
you've been engaging in a strategy, or want to engage in a strategy, or make it tough for certain kinds of people to vote, you might continue that, you know, for a while.

But at some point, with population changes and demographic changes, you might think that those people, whoever they are -- and we could plug in different categories of different things -- are going to get the vote anyway, and they might punish us if we continue putting obstacles in their path.

And I think that's a dynamic which -- you know, I mean, I think that will happen in Texas. I think that that will happen in North Carolina because they're not going to be able -- for a while, I mean, they are hanging on to it, but I think that some -- that it's a partisan switch dynamic.

But I wish I could say that there was a -- there was some magical insight that people had in the past that, you know, gave us a straightforward step forward, but I -- you know, I don't see it. You know, I mean, yes, a major mobilization for war would do it, but, you know, that's got downsides.

(Laughter.)

DR. CURTIN: The other case that you could add to your list about important Texas cases, of
course, is *White v. Regester*, which, you know, the Supreme Court said, "You can look at outcome." You know, and at-large, you know, voting is -- can be racially discriminatory. So that came out of Houston as well. So, and it was -- also involved Jordan and her -- and her Senate district.

So why do these cases come out of Texas? I think it's a very interesting question. I think a lot of it has to do with class. That even though Jordan came from a working class community, there were a lot of wealthier African Americans, particularly in Houston, who at the turn of the century really did take the Booker T. Washington idea of a bargain very seriously. And they stayed out of politics and focused on community wealth.

And then they used that money to buy very expensive homes and other built-up institutions in Houston. But I also think that it helped to build up the stability and the independence of the black community in the state. And you also had unions in Texas, which is also extremely important. And you had African Americans in unions and working in jobs in the ship channel.

And so I think the combination of employment and economic independence among the elites and also
among the working classes who were in unions really helped to fuel a sense of not just, you know, we're citizens, but we deserve the franchise, and we are going to fight thing this because the fight against the white primary goes back to the 1920s. You know, people had been trying for two decades before, you know, the Smith case to overturn this thing. And they had the money and the sense of citizenship and entitlement to really pursue it.

And in terms of why they continued to come out of Texas, I think on the other side the state legislature is very reluctant, you know, to do more than it needed to do. And so people went to the courts in order to force it, and you had no shortage of, also, besides labor unions, white liberals who really did create a very special alliance with blacks and Latinos in -- and labor in this period, in the '60s.

So it was a very vibrant period of coalition politics, and Jordan comes out of that tradition as well. So it has to do with economic opportunity and prosperity that gives people the ability to pursue these cases in the courts and to also sustain them over time.

DR. KEYSSAR: Can I just --
CHAIR LLAMON: Yes.

DR. KEYSSAR: -- give one more element of an answer to one of your questions to me? Because I've been thinking about it. Did I shut this off?

CHAIR LLAMON: We just couldn't hear you because you were far enough removed from it.

DR. KEYSSAR: Which is another, actually, you know, approach that has been important historically has been amending the Constitution. And, you know, I say this not -- you know, I know it's not an easy thing to do, but, actually, there have been more amendments about voting rights than about anything else.

And the core issue becomes that it's very, very hard to get states to change their voting laws and electoral practices by themselves unless leaned on by the Federal Government. And so constitutional amendment to buttress the authority of the Federal Government has historically really proved to be very, very substantial.

You know, and as you may know, I mean, I, for a number of years, have been, you know, supporting the idea of a constitutional amendment to put a right to vote in the U.S. Constitution, preposterous as that might sound. But, you know, I don't think that's an
idea that should be just thought of as either pie in
the sky or too fluffy. Constitutional amendments
work.

CHAIR LLAMON: Thank you. I want to make
sure that our two Commission colleagues on the phone
have a chance to ask questions if they have any. Any
other questions?

Well, thank you very much, Professor
Keyssar.

COMMISSIONER KLADNEY: No, thank you, Madam Chair.

CHAIR LLAMON: Thank you. Thank you very much, Professor
Keyssar, Professor Curtin, for your scholarly work every day and for your presentations to
us today. These were phenomenal. Thank you.

DR. CURTIN: Thank you.

DR. KEYSSAR: Thank you.

CHAIR LLAMON: So I've been asked if we could have just a five-minute break before we return
to the rest of our agenda. So we will pause until noon and then return to the rest of our agenda at
noon. Thank you.

(Whereupon, the above-entitled matter went off the record at 11:53 a.m. and resumed at
12:01 p.m.)
CHAIR LLAMON: Okay. I'm calling us back into our meeting just a little after noon.

F. STATE ADVISORY COMMITTEES

CHAIR LLAMON: I think we will turn next to vote on the four State Advisory Committee appointment slates to consider. Before we begin discussion, just a brief reminder that there have been objections to those slates and that those have already been shared with all of the Commissioners.

To the extent that you would like to discuss continuing objections, I ask that you not mention specific candidates by name. Each of these individuals has agreed to volunteer time and energy in the pursuit of the protection of civil rights, which we appreciate.

So with that, I begin with the Utah State Advisory Committee, and I move that the Commission appoint the following individuals to the Utah State Advisory Committee based on the recommendation of the Staff Director: Chyleen Arbon, Glenn Bailey, Virginius "Jinks" Dabney, Michael Homer, Robyn Kaelin, Michael Melendez, Debra Nunez, Sachin Pavithran, Anthony Peacock, Betty Sawyer, Michelle Suzuki, Filia "Phil" Ulpi, and Jeanetta Williams.

With this motion, the Commission will also...
appoint Chyleen Arbon as Chair of the Utah State Advisory Committee.

All of these members will serve as uncompensated government employees. If the motion passes, the Commission will authorize the Staff Director to execute the appropriate paperwork for the appointments.

Do I have a second for this motion?

COMMISSIONER NARASAKI: I second.

CHAIR LLAMON: Thank you. Is there any discussion? Commissioner Narasaki?

COMMISSIONER NARASAKI: I just have a general point, which I'd like to make. I was highly impressed with the qualifications of so many of the people who have been recruited to be on all of the SACs that are being presented to us, and I just really want to appreciate staff for the hard work that they are doing because I think it's excellent.

CHAIR LLAMON: Thank you. Commissioner Heriot?

COMMISSIONER HERIOT: The Utah SAC is the only SAC I'm going to be able to vote in favor of at this time. I think we, again, have problems with ideological balance, which is required by our administrative instructions.
And I'm started to get complaints from SAC members at some of our SACs about the difficulties they are having, feeling that they are being ideologically isolated and having no effect. There are a number of members of the Louisiana SAC who are considering resigning.

But I will be able to vote for the Utah SAC.

CHAIR LLAMON: Thank you. Any further discussion? Staff Director?

COMMISSIONER KIRSANOW: Yes, Madam Chair.

Oh, I'm sorry, go ahead.

MR. MORALES: Commissioner Heriot, could you please share those with me? I'm not aware of those complaints.

COMMISSIONER HERIOT: I can do that. I can do that.

MR. MORALES: I would really like to know about those, please.

COMMISSIONER HERIOT: Okay.

MR. MORALES: Thank you.

COMMISSIONER KIRSANOW: I'd just like to second what Commissioner Heriot has said. For the first time -- I've been on the Commission now for approximately 16 years -- and there was a period several years ago where there were complaints that I
received about the balance of the SACs.

But in the last six months or so, this is really the first time I have heard multiple complaints.

CHAIR LLAMON: I appreciate the concerns. Obviously, we will take them very seriously.

Now, if there is no further discussion, I will call the question for a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LLAMON: Commissioner Heriot?

COMMISSIONER HERIOT: Yes.

CHAIR LLAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Yes.

CHAIR LLAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LLAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LLAMON: Commissioner Yaki?

Commissioner Yaki, are you there?

Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LLAMON: And I vote yes. The motion passes unanimously.

I now move that the Commission appoints the
following individuals to the Hawaii State Advisory Committee based on the recommendation of the Staff Director: Nalani Fujimori-Kaina, Amefil Agbayani, Robert Alm, Eva Andrade, Alphonso Braggs, Vernon Char, Jennifer Dotson, Moses Haia, III, Luciano Minerbi, Kymberly Pine, Randall Roth, Wayne Tanna, and Jacqueline Young.

With this motion, the Commission will also appoint Nalani Fujimori-Kaina as Chair of the Hawaii State Advisory Committee.

All of these members will serve as uncompensated government employees. If the motion passes, the Commission will authorize the Staff Director to execute the appropriate paperwork for the appointments.

Do I have a second for this motion?

COMMISSIONER ADEGBILE: Second.

CHAIR LLAMON: Thank you. Any discussion? Hearing none, I'll call the question and take a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LLAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LLAMON: Commissioner Heriot?
COMMISSIONER HERIOT: No.

CHAIR LLAMON: Commissioner Kladney?

COMMISSIONER Kladney: Yes.

CHAIR LLAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LLAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LLAMON: And I vote yes. The vote -- the motion passes, two Commissioners opposed, all others were in favor. Thank you.

I now move that the Commission appoint the following individuals to the Mississippi State Advisory Committee based on the recommendation of the Staff Director: Susan Glisson, Lea Campbell, Macey Edmondson, Erik Fleming, Christopher Green, Caleb Herod, Derrick Johnson, Nicholas Lott, Kimberly Merchant, Reilly Morse, Lisa Roy, and Ronald Rychlak.

With this motion, the Commission will also appoint Susan Glisson as Chair of the Mississippi State Advisory Committee.

All of these members will serve as uncompensated government employees. If the motion passes, the Commission will authorize the Staff Director to execute the appropriate paperwork for the appointments.
Do I have a second for this motion?

COMMISSIONER NARASAKI: I second.

CHAIR LLAMON: Thank you. Any discussion?

Hearing none, I'll call the question and take a roll call vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LLAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LLAMON: Commissioner Heriot?

COMMISSIONER HERIOT: No.

CHAIR LLAMON: Commissioner Kladney?

COMMISSIONER KLADNEY: Yes.

CHAIR LLAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LLAMON: Vice Chair Timmons-Goodson?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LLAMON: And I vote yes. The motion passes, two Commissioners opposed, all others in favor.

I now move that the Commission appoint the following individuals to the Missouri State Advisory Committee based on the recommendation of the Staff Director: Elizabeth Moran, Mark Bremer, Chad Flanders, Eddie Greim, Amany Ragab Hacking, Domingo

With this motion, the Commission will also appoint Elizabeth Moran as Chair of the Missouri State Advisory Committee.

All of these members will serve as uncompensated government employees. If the motion passes, the Commission will authorize the Staff Director to execute the appropriate paperwork for the appointments.

Do I have a second for this motion?
VICE CHAIR TIMMONS-GOODSON: Second.
COMMISSIONER KLADNEY: Second.
CHAIR LLAMON: Any discussion? Hearing none, I'll call the question and take a roll call vote.
Commissioner Adegbile, how do you vote?
COMMISSIONER ADEGBILE: Aye.
CHAIR LLAMON: Commissioner Kirsanow?
COMMISSIONER KIRSANOW: No.
CHAIR LLAMON: Commissioner Heriot?
COMMISSIONER HERIOT: I understand some effort was made here, so I'm going to abstain on this one, although I think that the balance is really quite bad.
CHAIR LLAMON: Okay. Commissioner Kladney?
COMMISSIONER Kladney: Yes.
CHAIR LLAMON: Commissioner Narasaki?
COMMISSIONER Narasaki: Yes.
CHAIR LLAMON: Vice Chair Timmons-Goodson?
VICE CHAIR Timmons-Goodson: Yes.
CHAIR LLAMON: And I vote yes. The motion
passes, one Commissioner opposed, one Commissioner
abstained, all others in favor.

After passing these four slates, we now have
48 of our 51 advisory committees appointed and doing
their part to be the Commission's eyes and ears around
the country. That is a tremendous accomplishment, and
it will further justice and equality for all
Americans.

I so much thank David Mussatt and the
Commission's regional staff for their efforts to make
this possible.

I hear the concern from Commissioner Heriot
and from Commissioner Kirsanow that we need to make
sure that each of the slates has the appropriate
balance. I know that we have been -- we, together
with the staff, have been working very hard toward
that end. And it may be that a push to pass as many
slates as we have passed in the last seven months has
placed a strain on that, and I appreciate the staff's effort still to move forward, so that we can have our State Advisory Committees doing the bipartisan effective, important work that they do on a volunteer basis for us.

I am so looking forward to reaching the finish line of seeing the remaining three State Advisory Committees appointed, and I thank the staff in advance for their work to get us there.

The good news is that we now get to hear from two of our State Advisory Committees themselves about the work that they have done.

C. PRESENTATION BY CALIFORNIA ADVISORY COMMITTEE

MEMBER NANCY EISENHART

ON THE COMMITTEE'S RECENT REPORT,
"VOTING INTEGRITY IN CALIFORNIA"

CHAIR LLAMON: We'll hear over the phone from, first, Nancy Eisenhart, who is a member of the California Advisory Committee, who will discuss the committee's recent report on voting integrity in California.

Ms. Eisenhart?

MS. EISENHART: Yes. Well, good morning, I mean, good afternoon, Commissioners. First, I want to say that I was touched that you are acknowledging the
anniversary of the 19th Amendment. That was important to our family. My grandmother marched for the cause.

And I am pleased to be with you today to brief you on the California Advisory Committee's 57-page report on voting integrity in California, Issues and Concerns in the 21st Century, and to represent the many witnesses who contributed to its content.

When we began, California's complicated electoral system left many voters unhappy. The turnout was low. Why? Voter ID, voter fraud, no consensus here. Many voters don't think their vote counts.

Now, California is an enormous diverse state with 18 million of us voters. If even a small percent of us feel our vote doesn't count, that's still an unacceptable number. And the sense of disenfranchisement continues.

What the committee wanted was to find if our elections are run fairly and do they protect each person's right to vote? Is the law followed? Is each voter registered once? Are our votes counted the way we voted?

The one thing we knew to start with was that California was the only state without a statewide voter database, the one that was mandated in 2002 in the Help America Vote Act called HAVA.
It turns out the database failure was the key factor in California's being ranked 49th out of 50 states in a 2012 Pew Charitable Trust Index on election performance.

California also failed in how it handled provisional and absentee ballots in that same election performance index, accounting for more than 40 percent of the country's provisional ballots.

With that data, it was clear, California was failing its citizens by not adequately complying with election laws. Then we came upon a report from the non-partisan election research group, Election Integrity Project. This report provided a startling statistic.

After analyzing voter rolls purchased from Los Angeles County, we identified over 60,000 irregularities, their terminology. Included in that number were thousands of names of deceased still listed as eligible to vote.

The Committee set a public hearing for August 28, 2015, inviting key government officials, appropriate groups and business leaders and public witnesses. We collected and analyzed countless voting incident reports all submitted under penalty of perjury.
After looking at all the evidence and hearing the testimony, our initial observation was that the state's failures in the administration of justice and voting right issues fall into these general categories: ignorance of the law, errors or ineptitude or disregard of the law by intent.

We heard no significant evidence that bias based on race, color, sex, disability, gender, religion was a factor. At this point, I would like to make clear the California Advisory Committee understands its mission of serving as an advisory authority, not a law enforcement agency, which is relevant due to testimony having to do with voter fraud.

Yes, we heard many testimonies about voter or election fraud both in person and in the over 80 post-hearing testimonies. And there were testimonies about partisan election interference, including intimidation and defiance of election and civil laws.

We heard testimony that certain voting crimes, the dead voting impersonation by absentee or in person may be undetectable or unattributable and are generally unreportable. And those are called the perfect crimes.

Nevertheless, we are advising appropriate
agencies to pursue these fraud incidents as reported if the statutes of limitation hold up.

At the August 2015 hearing, the Secretary of State's representative testified that the new VoteCal database would be finished by June 2016 and promised to let us know when it was certified.

Remember, it was not completed when we issued the June 2016 report. Regardless of when VoteCal was certified, and it was eventually on September 26, 2015, precinct reports from around the state for the 2016 elections reflected that VoteCal, as counted, was anything but satisfactory in action.

The 2015 hearing also gave us new perspectives on voting. Lori Steele, President of Everyone Counts, an election administration and technology company, testified California cannot be a part of the 21st Century until it replaces outmoded election laws and new systems with military grade safeguards and methodologies that are ready now.

She believes that accessible modern technology will benefit everyone, but especially the disabled, military and seniors.

Officers of the Election Integrity Project then testified to the many verified failures associated with provisional and absentee ballots and
online registration.

What about provisional? HAVA presented provisional as the democratic solution to help citizens whose eligibility to vote on election day could not immediately be established.

CHAIR LHAMON: Ms. Eisenhart, I'm going to ask you to wrap so that we have a moment for questions from the Commissioners themselves. And you can assume that we did read the report.

MS. EISENHART: Okay. Well, okay. So HAVA presented them as a democratic solution, but the registrars of voters preferred to call them a convenience and offer a more pleasurable voting experience.

We do not dispute that HAVA was right to include provisional balloting in its legislation. The problem is excessive use, which leads to chaos.

So Commissioners, why do some voters have to vote provisionally? When I was a poll worker --

CHAIR LHAMON: Excuse me, Ms. Eisenhart, we're going to conclude there and move to questions from the Commissioners. Thank you very much for your presentation. I will open it up for questions.

MS. EISENHART: My pleasure. Are there any questions?
CHAIR LHAMON: I think so. Commissioner Adegbile?

COMMISSIONER ADEGBILE: Yes. As part of your inquiry, was there a testimony from the registrar in L.A. County who looked into this question about multiple registrations and attempted to examine whether or not people had in fact voted twice?

MS. EISENHART: Well, they gave testimony, but not specifically to that at our hearing. There was a question on the deceased voter rolls that had been hastily removed prior to our hearing. And that was the only thing mentioned then.

COMMISSIONER ADEGBILE: I thought I saw on Page 19 that they looked into this question of multiple registrations and were unable to identify that people were in fact voting twice, but perhaps I misunderstood that.

MS. EISENHART: There may have been a reference to that. That was the L.A. County. Part of the problem is the will to examine them closely and to actually study the results of what didn't appear to be there from the testimony that we heard.

COMMISSIONER ADEGBILE: What I saw on the report was language on 19 that says an audit of voter registration records in Los Angeles County following
the 2014 election found a few dozen voters with
duplicate registration records, but did not find any
cases where people had actually voted twice in the
same election.

MS. EISENHART: Maybe that's not the main
issue. Maybe that is an issue they're voting in other
counties or other states. I'd have to see the
documents again. But there are a multiple of
irregularities without calling them crimes or fraud
right now that need to be looked into. And everybody
should want to.

COMMISSIONER ADEGBILE: Thank you.

MS. EISENHART: You're welcome.

CHAIR LHAMON: Any questions from other
Commissioners? Commissioner Narasaki.

COMMISSIONER NARASAKI: Yes. I'm also
confused because on Page 20 it talks about the L.A.
County auditor actually doing a sampling and looking
at duplicate registrations over three or four years.
And that from their sampling it initially showed that
there were three people who might have voted twice,
but then they reviewed it and found that in fact what
was happening was that there were registrar staff
mistakes in entering the voter information.

MS. EISENHART: Well, if you pull that out,
that's like 45,000 mistakes for the number of people that voted. So it's just an unacceptable attitude about doing things the right way and according to law.

And I don't know if they reviewed the sampling of 100 voters. That doesn't sound like a very extensive sampling, but that was what they said there. I'm not refuting that. But I'm just saying it's still a sign that there's something wrong there.

COMMISSIONER NARASAKI: Yes.

MS. EISENHART: We had one-third --

COMMISSIONER NARASAKI: I also had another question, which is my understanding a lot of the report talks about the issues around VoteCal. But my understanding is VoteCal has actually now been deployed.

MS. EISENHART: Well, it was certified. The problem is when we're on the ground here working with it, it's not functioning right. At the last election, the 2016 November election, one-third of the people in precincts that I worked in that other people were -- had to receive provisional ballots.

And there were many reasons for those provisionals. Not that they're not entitled to do that, but they are -- there's something wrong because one-third of the people who voted were unhappy. They
did not have a pleasurable experience.

COMMISSIONER NARASAKI: I did want to note that I did appreciate the attention that was paid to talking about access for people with disabilities.

I think that is an issue that often gets not enough attention and very much appreciated your focus on the training of poll workers, which definitely could be improved across many of the states.

MS. EISENHART: And modernizing laws would help them tremendously for the blind in so many areas.

CHAIR LHAMON: Thank you, Ms. Eisenhart. Are there any other questions? Okay then next -- Ms. Eisenhart, thank you very much.

Next we'll turn to Rachel Sigman, also over the phone, another member of the California Advisory Committee who has submitted a dissenting statement to the report and asked to present to the Commission on her dissent. Ms. Sigman?

MS. SIGMAN: Yes. Thank you very much, Madam Chair and members of the Commission. Thank you so much for granting me the opportunity to speak to you today.

I'm grateful to be in a position to provide information that I hope will be used towards
the protection and advancement of voting rights in California.

Let me start by saying that everything I say today and that I've written in the dissent is solely my personal views. As you know, I'm a member of the California State Advisory Committee and author of the dissent.

I thank my fellow committee members, Nancy Eisenhart for their hard work on this report. While I do question many of the report's conclusions and recommendations, I agree with you that the attention to issues for voters with disabilities as well as the large number of provisional ballots used in California are important issues to raise. And I applaud them for this work.

I have three items I'd like to briefly cover. First, I'd like to provide a brief overview of the process that led to the production of this report and highlight some of the ways in which opportunities for participation and deliberation were limited for some committee members.

Second, I'll explain, as has been already talked about, how the delay in the production and the release of the report has rendered a number of its findings outdated.
And third I'd like to discuss what I see as a large disconnect between the report's conclusions and the testimony provided by public officials at the Committee's August 28, 2015, public hearing as well as the state of knowledge about voting integrity in California.

So to get started, first, regarding the process through which the Committee came to produce and vote on this report, there are two issues I'd like to highlight.

First, I'd like to note that the scope of the project proposal that was approved by the full Committee in June 2015 is not at all reflected in the final report.

This proposal was titled Voting Rights in California. And its stated scope was limited to the investigation of California's compliance with the Help America Vote Act because "non-compliance may adversely affect minority voting rights."

However, in reading the final report, you'll see not only that the title has changed to be about voting integrity rather than voting rights, but there's not one reference to issues of minority voting rights in the final report unless perhaps the author is meant to include voters with disabilities and
military service members in its minority category.

As a committee member who voted in favor of the original project proposal, this is very troubling to me that the project has strayed so far from its original intent.

Second, there were a number of logistical issues in the process that prevented participation and deliberation by the full Committee.

One example is that at the time of the August 2015 public hearing, I personally lived over 500 miles away from the location of the hearing. I was told there were no resources to support my attendance. And there was no opportunity offered to either call in or submit questions in advance.

These problems continued as the Committee moved to deliberate and vote on the final report, both of which occurred at a meeting on June 1, 2016.

The draft report was circulated to the Committee only two business days before the meeting, which was on Friday, May 27, which was a Friday before a holiday weekend. And from what I saw, only one Committee member was able to circulate comments on the draft before the meeting.

Moreover, the meeting was scheduled at a time when only seven of the 13 Committee members were
able to attend. And according to the minutes of that June 1 meeting, there was hardly any discussion about the report before a vote was taken.

So now to my second item. Because of delays in the production and release of the report, many of its findings are now outdated. You've already covered the VoteCal database, so I will not talk any more about that.

But also, I'd like to mention that California has now passed and is implementing AB-363, also known as the new motor voter laws, which allows citizens to register automatically when obtaining a driver's license from the DMV.

According to testimony from both California state officials and the director of the Election Project from the Pew Charitable Trust, this new system is addressing many of the registry issues that have given rise to some of the issues that are pointed out in the report.

Additionally, I would like to note that most of the testimony from State Auditor Elaine Howell at the August 2015 public hearing was based almost entirely on an investigation that had been conducted in 2012.

On several occasions, during her
testimony, she noted that the Secretary of State's office had already sought to resolve the issues noted in the report, including the issues that made their way into the conclusions regarding the 2005 Memorandum of Agreement with the Department of Justice.

This last point serves as a good segue to the third issue I want to address, which is that there is just not enough reliable information available to support many of the report's conclusions and recommendations.

For example, four of the report's 14 bulleted conclusions have no explicit reference to testimony from the public hearing or information cited in the report.

Another two of the bulleted conclusions are based solely on anecdotal observation by individual citizens.

Another four bullet points come from testimony of reports produced by representatives of an organization, the Election Integrity Project, that has been connected to reports of voter suppression and intimidation.

I would point you to the transcripts from the hearing, Page 231, Lines 18 and 19, when a member
of this organization, while serving as a trained volunteer poll watcher insisted five times on calling the police to come to the polling station to settle what appears to have been a very minor issue about sharing a voter list. So clearly there is some effort to disrupt on the part of that organization.

Finally, it has been mentioned in one of the questions that came up to Ms. Eisenhart, the L.A. County voter registrar clearly said that the occurrence of fraudulent voting is basically non-existent.

He said, quote, on Page 98, 99 of the transcript, “when you say the fraudulent votes that we know of, I don't think they are coming. Clearly, the numbers in California show we have a bigger issue of people not participating in election and people really trying to over participate in the election.”

I might also add that from the 2016 election, according to official state records obtained through a public records request by the non-profit, non-partisan media venture called CALmatters, there were 89 voter irregularity complaints that eventually triggered investigations by the Secretary of State. And these represent .001 percent of the more than 23 million votes passed in California's 2016 primary and
general elections.

To conclude, I'd just like to convey to the Commission that the reports focused on voting integrity is not only out of sync with the original intentions of the project as it was approved by the Committee, but it is very misguided both in terms of the supporting evidence available and its relationship to voting rights issues pertinent to the mission of this Commission.

I would thus urge you to receive the report's conclusions and recommendations with caution and some amount of skepticism and carefully consider how any action that results from this report may impact broader concerns about the protection and advancement of voting rights in California.

Thank you very much.

CHAIR LHAMON: Thank you, Ms. Sigman. Are there questions for Ms. Sigman? Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you very much, Ms. Sigman. I do have a question. In your statement in one of the paragraphs it says the rating cited from the Pew Charitable Trust's Election Performance Index are not related to the application of election laws.

So what did you mean by that?
MS. SIGMAN: Oh, I just meant the ratings don't -- so the negative, the sort of negative view of the ratings that come out of this for California are not based on the election law compliance ratings. California actually scored quite well on that. I can't remember the exact score off the top of my head.

But the low ratings from the Pew study are primarily a result of low rates and voter turnout, high rates of provisional balloting and those kinds of issues.

CHAIR LHAMON: Thank you. So if there are no further questions, Ms. Sigman and Ms. Eisenhart, thank you very much for your presentations to us, for your service to the State Advisory Committee and to the country.

We really appreciate your work and your fellow Committee members' work on this important issue and appreciate your taking the time to present to us.

Next we will hear now, also over the phone, from Naheed Bleecker, who is the chair of the Wisconsin Advisory Committee, on the Committee's recent report on hate crimes and civil rights in Wisconsin.

Ms. Bleecker? And you also may assume that we have read the report, and we look forward to a
brief presentation from you.

D. PRESENTATION BY WISCONSIN ADVISORY COMMITTEE CHAIR NAHEED BLEECKER ON THE COMMITTEE’S RECENT REPORT, "HATE CRIMES AND CIVIL RIGHTS IN WISCONSIN"

MS. BLEECKER: Hi. Thank you very much. I really appreciate this opportunity. I'm very honored to be able to present to you.

My Committee has spent many, many months, in fact, a couple of years putting their heart and soul into this report. I do want to also recognize and thank David Mussatt, who runs the regional office in Chicago, for all the support he and his staff provided us as we labored through this report.

So what I want, to give you the background, the genesis of this report really came from, and the inspiration really came from the massacre that occurred at the Sikh temple in Oak Creek, Wisconsin, in 2012.

About a year later, our Committee held a panel discussion focused on that massacre. So our panel then conducted in 2013 to hear from those victims and learn a little bit more about hate crime in general in Wisconsin.

Our Committee was so moved, inspired that
we really wanted to follow-up and see not only how the Sikh community had been impacted in the following couple of years, but also learned about other hate crimes in Wisconsin.

In the course of putting together our report, it was a research project. It wasn't just people's opinions or anything like that. We really did delve into quite a bit of data that was out there, and we culminated in our hate crime panel that took place a year ago.

So we know Wisconsin has problems. We've acknowledged that. In the report there's quite a bit of data around that, especially in larger cities such as Milwaukee. In general, we discovered that hate crime enhancers are not always consistently applied.

In our follow-up with the Sikh temple survivors and other people who could tell us about what had happened there, we learned more about the compounded effects of hate crimes. So that, for example, if hate is directed towards Muslims by association just by skin colors, Sikhs and other groups may also face criminal activity directed towards them. So that was very eye opening to us.

In our panel, we also learned about the intersectionality of hate crimes and again, how
underreported that may be and how exacerbated those problems may be.

For example, hate crimes may already be directed towards the African American community, but when that individual may also be part of the LGBTQ community, it's just made so much worse for that kind of group.

Our Committee tried very hard to distinguish between hate crimes and hate incidents and hate speech. And that did create quite a bit of lively discussion within our Committee in several of our sessions.

We really wanted to focus on hate crimes. But in our report, you'll see that we did share stores and a sampling of some of the other hate incidents as well.

We learned that family members are not always protected. For example, a child may have an LGBTQ parent. That parent may suffer a hate crime. The child may have been attacked as well. But the crime against that child would not be part of that hate crime data and would not be protected under hate crime laws.

Again, we discovered underreporting. Also often victims want to stay invisible when a crime is
committed, a murder is committed towards an individual and that person is again part of the LGBT community.

As an example, that family may not want publicity around that aspect of that person. So, again, victims even post-mortem end up going underrepresented.

We had data collection challenges as well as noted throughout our report. And then we did conclude with a handful of recommendations. Again, please note that our focus was on what we felt was our audience, which is you, your Commission, and also at a federal level.

There were some suggestions made at the Wisconsin and local level. But we didn't go deep into telling the Wisconsin state legislature how to implement various laws, like sanctions and that kind of thing.

So, again, we kept our focus on hate crimes and at the national level and hope to put together a report that would be meaningful and thought provoking for you.

So that's my overview.

CHAIR LHAMON: Ms. Bleecker, thank you very much.

Are there questions from my fellow
Commissioners? Commissioner Narasaki.

COMMISSIONER NARASAKI: Yes. I very much appreciated your SAC's work on hate crimes. As you know, the Commission is actually going to be taking up the issue on a national level, and this will be extremely helpful, I think, as we prepare for that hearing.

I note that this month is the fifth anniversary of the murder of several people at the Sikh gurdwara in Oak Creek.

And so I think it's particularly important that we're discussing the report today, particularly since, in my experience, and I worked on hate crimes for well over 30 years now, Asian Americans continue to (a) underreport hate crimes because three-quarters are immigrants, and they're not necessarily aware that there are laws that protect them, and (b) when it happens, the media, particularly the national media, rarely ever covers hate crimes against Asians.

So I appreciate the fact that you are trying to highlight this issue.

I'm wondering whether -- my perception in terms of what happened after Oak Creek was the local law enforcement was very quick to act appropriately. And one of the things that we are trying to do with
the hate crime review we will be doing is identify police departments who are doing a good job. And I'm wondering if you would have any to recommend from Wisconsin.

MS. BLEECKER: I would say I'm probably not prepared to answer that today. I think the police did a very nice job. They were very responsive.

There was certainly no controversy around their support, their actions, at a local level. But I am not prepared to make recommendations right now.

I can take a note and discuss that with my Committee if you would like and get back to you?

COMMISSIONER NARASAKI: That would be appreciated. Thank you.

MS. BLEECKER: Of course.

CHAIR LHAMON: Ms. Bleecker, I echo the thanks for the work from your Advisory Committee and also for the comprehensiveness of the report.

I noted that many of the concerns that you reviewed and identified echo the topics that we have voted to take up in our hate crimes investigation.

So I know that this report will be very useful to the full Commission as we embark on that process. I also was really struck by the inclusion in the report of the community context in Wisconsin,
specific both to the hate crimes topic that you were addressing, but also to the challenge of your advisory committee and the issues that you take up in your state.

It was jarring to me to read at Page 14 of your report that recent studies note that Wisconsin is "the worst state in the nation for Black people" and that it has the dubious reputation of incarcerating the highest percentage of its Black male population in the nation.

Those stark data together with the incident that drew you and the Committee to this investigation made my heart bleed for you and for your fellow citizens. And I really want to underscore again my gratitude to you for the work that you do on a volunteer basis for us, you and your fellow Committee members. Are there other --

MS. BLEECKER: Thank you so much for that feedback. I will provide that to my Committee. I know they'll appreciate that.

CHAIR LHAMON: Are there other questions for Ms. Bleecker? If not, I will thank you again for your presentation. And it is very, very meaningful to us on the Commission to be able to hear directly from our SAC members about the work that they do. And I'm
grateful for your time.

And I also thank our regional staff for the hard work in facilitating the work of the Advisory Committees which are so very, very meaningful to us at the Commission.

Next we'll hear from the staff director, Mr. Mauro Morales, for his monthly staff director's report.

MR. MORALES: Thank you, Madam Chair. In the interest of time, I won't get into any details but, of course, I'm available as always to discuss any specific matters or concerns that the Commissioners have regarding the operation and management of the Commission.

CHAIR LHAMON: Thank you. And normally we do just simply appreciate receiving your report, which I do, but this month I do need to raise one point with you regarding report output for the Commission.

I know, and I'm so grateful for, the diligent work our office of civil rights evaluation has been doing to generate report drafts for the Commission to review following briefings. And that office has had an acting director who fulfills dual very significant roles for the Commission because the director position has been vacant since before my
appointment to the Commission.

And also that the staff in that office completely turned over shortly before my arrival, now eight months ago. And those types of challenges mean that the staff and their acting director inherited a report backlog, just as I did.

And I deeply appreciate their efforts notwithstanding very, very challenging staffing circumstances and the need for new staff to get up to speed on Commission practices to plow through that backlog and to generate for draft reports on topics for Commissioner's review. So I start with that gratitude.

But nonetheless, the reality is that fulfilling our charge as a Commission means actually producing reports to the public conveying our findings and recommendations on issues we vote to investigate, and we need to see the drafts cross the finish line.

So I call on you, Mr. Staff Director, to find a way for the Commission staff to achieve that end where we are producing reports to the public and publishing them. And I ask you to report back to the Commission by our next meeting about your plan to achieve that result.

MR. MORALES: Thank you, Ma'am Chair. I
appreciate your candor and as you mentioned some of
the challenges we have are common, and I've dealt with
over the past year.

I appreciate your comments. And I will
work with staff and with the Commissioners themselves
in the coming week here. And I will provide you with
a response that you are seeking.

CHAIR LHAMON: Thank you. I look forward
to it. So next we'll consider a proposed
administrative instruction chaired by Commissioner
Narasaki. Commissioner Narasaki, do you want to start
us off in discussion?

COMMISSIONER NARASAKI: Yes. Thank you,
Madam Chair. I am proposing an administrative
instruction that seeks to address a situation that we
hope will never happen, which is the vacancy of a
chair and vice chair at the same time.

I sort of call to mind when we sent a
delegation off to DAPL to investigate. And the
Commissioners there, including the chair and vice
chair, came back with somewhat harrowing tales of
driving in blizzards, and God knows what could have
happened.

So the purpose is to establish a policy
where if there's a vacancy the Commission can
designate by a majority vote one of the Commissioners to exercise the powers and functions on our behalf.

It's fairly clear to me that certainly the Commission would be able to act by a majority vote on all these things. But there's a reason why we have someone who is designated to be able to make sure that the trains keep running and is able to be a partner with the staff director to make sure that we are able to have effective hearings and everything is running well.

So what we would do — we are not seeking to create an acting position. Anyone who would step into this would not, for example, be allowed to use the additional hours that would be allocated if they had actually been appointed as acting through the regular process or as the actual chair.

This is simply something about efficiency. And the way it would work, we have circulated a draft to everyone's staff and to the Commissioners several days ago. What my special assistant has passed around is a version that has an amendment that was made at the suggestion of Commissioner Heriot, which would make it clear in the scope of authority that the person appointed designee would not be eligible to be reimbursed for billable hours.
We didn't have it in the original draft because we think the law is pretty clear the way it reads, that they wouldn't get it anyway. But we're happy to clarify that.

And that provision would simply read, the Commissioner has been appointed designee, is not eligible to be reimbursed for additional billable days that the chairperson may have been eligible for under the Commission's appropriation language or any other statute or regulation.

It turns out that the additional hours is in appropriations language and apparently nowhere else. So I'm open for questions.

CHAIR LHAMON: Thank you. First, do we have a motion to approve the proposed administrative instruction?

VICE CHAIR TIMMONS-GOODSON: I would so move, Madam Chair.

CHAIR LHAMON: Do we have a second?

COMMISSIONER ADEGBILE: Second.

CHAIR LHAMON: So are there questions or discussion? Okay. We'll move to a vote.

Commissioner Adegbile, how do you vote?

COMMISSIONER ADEGBILE: Aye.

CHAIR LHAMON: Commissioner Heriot?
COMMISSIONER HERIOT: I vote no. I appreciate Commissioner Narasaki's willingness -- sorry. I appreciate Commissioner Narasaki's willingness to put that into the rule. I still think this is likely to be regarded as inconsistent with the Ishimaru case. And so I'm going to vote no at this time.

CHAIR LHAMON: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: No.

CHAIR LHAMON: Too many of us -- there we go. Commissioner Kladney?

COMMISSIONER KLADENY: Yes.

CHAIR LHAMON: Commissioner Narasaki?

COMMISSIONER NARASAKI: Yes.

CHAIR LHAMON: Vice Chair?

VICE CHAIR TIMMONS-GOODSON: Yes.

CHAIR LHAMON: And I vote yes. The motion passes. Two Commissioners oppose. All others were in favor. So if there is nothing further, I hereby adjourn our meeting at 12:48 p.m. Eastern Daylight Time. Thank you.

(Whereupon, the above-entitled matter went off the record at 12:48 p.m.)