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U.S. COMMISSION ON CIVIL RIGHTS

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MEETING

UNEDITED

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FRIDAY, DECEMBER 13, 2013

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The Commission convened in Suite 1150 at 1331 Pennsylvania Avenue, Northwest, Washington, D.C. at 9:30 a.m., Martin R. Castro, Chairman, presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

ROBERTA ACHTENBERG, Commissioner*

TODD F. GAZIANO, Commissioner*

GAIL HERIOT, Commissioner

DAVID KLADNEY, Commissioner

MICHAEL YAKI, Commissioner*

MARLENE SALLO, Staff Director

JENNIFER CRON HEPLER, Solicitor, Parliamentarian

* Present via telephone

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STAFF PRESENT:

MARGARET BUTLER

MALEE CRAFT, Director, RMRO

IVY L. DAVIS, Director, ERO

PAMELA DUNSTON, Chief, ASCD

ALFREDA GREENE

TINALOUISE MARTIN, Director, OM

HOPE LOVETT

JOHN RATCLIFFE, Chief, BGT

EILEEN RUDERT

MICHELLE YORKMAN

COMMISSIONER ASSISTANTS PRESENT:

KENESHA GRANT

ALEC DEULL

JOHN MARTIN

JUANA SILVERIO

ALISON SOMIN

KIMBERLY TOLHURST

OCRE INTERN PRESENT:

RICHARD AHNE

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

(9:35 a.m.)

CHAIRMAN CASTRO: I'm going to call this meeting to order. This is a meeting of the U.S. Commission on Civil Rights. Today is December 13, 2013. It is now 9:36 a.m. Eastern Time. Our meeting is taking place as usual at the Commission's headquarters located at 1331 Pennsylvania Avenue, N.W. in Washington.

I'm Chairman Marty Castro. Commissioners who are present in the meeting with me are myself, of course, Commissioner Heriot, Commissioner Kladney. On the phone we have Commissioner Gaziano, Commissioner Achtenberg, and Commissioner Yaki. A quorum of the Commission is Present.

Is the court reporter present?

COURT REPORTER: I am.

CHAIRMAN CASTRO: He is.

Is our Staff Director present?

MS. SALLO: Present.

CHAIRMAN CASTRO: Okay. So the first item we have is the Approval of the Agenda.

I. APPROVAL OF AGENDA

CHAIRMAN CASTRO: I move that we approve

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1 the agenda. Is there a second?

2 COMMISSIONER KLADNEY: Second.

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

6 COMMISSIONERS: Aye.

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

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

16 Welcome back.

17 COMMISSIONER HERIOT: Thank you, Mr.
18 Chairman.

19 CHAIRMAN CASTRO: Also, you know, this last
20 week we've observed a couple of important events. Last
21 week, of course, we lost Nelson Mandela at age 95. It's
22 important, I think, that those of us in the civil rights
23 community recognize the great accomplishments that he

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1 had not only for the people of South Africa but for all
2 of us across the world.

3 I think the words of Nelson Mandela that are
4 most apropos to the work that we do here at the Commission
5 is his quote that says, "It is intolerable and
6 unacceptable that the cancer of racism is still eating
7 away at the fabric of societies in different parts of our
8 world.

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

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

21 With that I would like to move onto our
22 formal agenda. First we have Management and Operations
23 so if our Staff Director could proceed.

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1 **II. MANAGEMENT AND OPERATIONS**

2 **STAFF DIRECTOR'S REPORT**

3 MS. SALLO: Thank you, Chairman. The
4 report will not be as long as last month but I followed
5 the same format in referring to our strategic goals and
6 objectives as I go through the report.

7 Prior to that, I wanted to advise the
8 Commission that our two interns from the ODC office,
9 Raziya Brumfield and Kristin Stitcher, they are no longer
10 with us. They completed their fall 2013 legal
11 internship. In the audience today we have Richard Ahne
12 and he is completing his internship today.

13 He's been with the Office of Civil Rights
14 Evaluation and all three interns actually did a
15 significant amount of work as all our interns always do.
16 They truly contributed to the work that we've been doing
17 the past three and four months. I am extremely grateful
18 for all of their efforts and they will all be missed.

19 CHAIRMAN CASTRO: Can I just add something?

20 MS. SALLO: Oh, sure.

21 CHAIRMAN CASTRO: I want to thank all of our
22 interns for their service but especially you. I
23 understand you've done a tremendous amount of work here

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1 and contributed greatly in your time so I want to thank
2 you for that service and wish you well as you move onto
3 other things. Hopefully we'll see you back here in some
4 other capacity in the future.

5 MS. SALLO: Richard came to us from the
6 Hill. He had an internship there as well. I recently
7 went up to the Hill just to gather information on Stand
8 Your Ground and I brought him with me and he was extremely
9 helpful while we were up there. He was raring to go. He
10 did a lot of the background research for us so he will
11 be missed.

12 CHAIRMAN CASTRO: Thank you.

13 MS. SALLO: I now want to go into the first
14 part of our strategic action plan which refers to the
15 studies that we issue. I wanted to advise that as it
16 applies to our Statutory Enforcement Report, that was
17 sent out by the deadline of September 30th and it was
18 disseminated electronically. We did, however, order
19 hard copies.

20 GPO did send us a hard copy recently for us
21 to review before it goes to final print. Thankfully
22 staff did identify some spacing issues so that was sent
23 back to GPO for corrections and hopefully the print will

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1 now commence. Once we have the hard copies, I will
2 advise the Commissioners of such. I also plan on
3 submitting hard copies to our Committee members so that
4 they can have easy access rather than having the
5 electronic.

6 As it applies to the outstanding reports
7 that we currently have in the pipeline, we did receive
8 rebuttal for the EEOC Report as well as the Eminent Domain
9 Report. I did disseminate that yesterday. My
10 apologies. I should have done it earlier in the week.

11 At this point in time they have been given
12 -- all the statements have been provided to the editor.
13 We will, of course, await the requisite time to see if
14 anyone plans on submitting a surrebuttal. If not, then
15 we will move forward with getting it ready for print.

16 A cover has already been identified for the
17 EEOC Report and we are currently trying to shore up an
18 appropriate cover for the Eminent Domain. We've been
19 going back and forth with stock picture to figure out what
20 fits best.

21 COMMISSIONER HERIOT: Will we get a chance
22 to see the cover -- proposed cover?

23 MS. SALLO: If you want me to, I can send

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1 it.

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

5 CHAIRMAN CASTRO: In a bad way?

6 COMMISSIONER HERIOT: In a bad way. This
7 was before your tenure.

8 MS. SALLO: Okay. I will forward that.

9

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

16 We also have the Religious Liberty Report
17 that I have yet to review, the Civil Rights of our
18 Veterans which I've kind of skimmed over, and the NBRA
19 Report that I have yet to review. Those are the other
20 three that are in the pipeline. I will be moving forward
21 on those as best as I can.

22 As it applies to, I previously indicated
23 that we were going to have a gentleman come in to do the

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1 advanced reporting writing seminar. That did occur. I
2 believe that he did an excellent job and staff
3 participated both here at headquarters and from the
4 regional office so I was very happy about that.

5 As we move onto Strategic Goal B where it
6 discusses Stand Your Ground at this point in time. It's
7 kind of on hold for the present moment because we have
8 been working on all these other issues. Starting in the
9 new calendar year we will move forward with continuation
10 of the Stand Your Ground project.

11 If you reviewed the report from the Office
12 of the Staff Director, we do have other things listed
13 throughout that I think I won't be reviewing step by step
14 by I will advise that we are currently reviewing our AI's
15 to see which ones are out of date so that we can update
16 the. We continue to move forward on that. That will be
17 about a six-month project because there are so many
18 things that staff are responsible for doing at the same
19 time. We are looking at a six-month project for that.

20 We are also updating our -- finalizing the
21 updates to the Civil Rights book that we put out every
22 year, the Uncle Sam book. Since we do have the in-house
23 editor, I want her to be able to complete the Spanish

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1 version as well as the English updated version before she
2 leaves in April so that we can get that printed as well.

3 Then as it applies to the SACs, we did have
4 a report that was just issued and I will be disseminating
5 it from the Nevada SAC members. I will be sending that
6 out. We will probably have a couple of other reports
7 coming forward, one from Tennessee, one possibly from
8 Florida, as well as Georgia in the near future.

9 Our SAC members continue to meet as best as
10 they can telephonically. We do have a 1-800 number that
11 the SAC members have access to so that they can hold
12 telephonic meetings and that number allows our members
13 to also receive a transcript of each meeting that they
14 hold telephonically which then can be uploaded onto our
15 FACA database which is a requirement so that we can keep
16 track of all of the activities of the SACs.

17 I continue to keep an open line of
18 communication with the SAC members, as well as the SAC
19 chairs. After the holidays are over we hope to start
20 ramping up a bit more. Especially once we receive our
21 budget.

22 That being said with the budget, at the
23 present time we are all aware that the House has a budget

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1 in place but as it applies to our CJS budget, they should
2 be going to conference. I don't have the exact date as
3 of yet but as it applies to both the Senate and the House
4 bill, I'm not aware of any changes since the last time
5 that I circulated that. It looks like there's a
6 difference of at least \$700,000 between the House
7 proposed budget and the Senate proposed budget. Once I
8 receive word that they are going to conference, I will
9 advise everyone of that.

10 That's my report.

11 CHAIRMAN CASTRO: Any questions for the
12 Staff Director?

13 COMMISSIONER GAZIANO: Mr. Chair.

14 CHAIRMAN CASTRO: Commissioner Gaziano.

15 COMMISSIONER GAZIANO: Yes. I just have a
16 sort of follow-up item for the Staff Director from the
17 previous meeting.

18 MS. SALLO: Yes, sir.

19 COMMISSIONER GAZIANO: If that's
20 appropriate.

21 CHAIRMAN CASTRO: Yes, please.

22 COMMISSIONER GAZIANO: You announced at
23 the last meeting that Mr. Rorey Smith, I believe, was

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1 hired and I'm not sure at that time whether he was
2 actually hired or going to be hired. Is he now serving
3 the Commission?

4 MS. SALLO: He will start with the
5 Commission on Monday.

6 COMMISSIONER GAZIANO: Okay. Well, I
7 don't necessarily mean to hold him up unless we in our
8 discussion today suggest that is appropriate. At the
9 last meeting I asked you about the observance of our rule.
10 It's actually an AI, AI1-16. I didn't know that --
11 actually Section 2.03 -- that the Commission has 30 days
12 to -- the Commissioners, I should say, have 30 days to
13 review an intended appointment by the staff director of
14 the general counsel or the deputy staff director and vote
15 to disapprove.

16 Your comment at that time was that this had
17 been changed from a political appointment to a career
18 appointment. My review of the AI suggest no distinction
19 is inherent in the AI. I'll read it for the other
20 Commissioners. If the gentleman was already on the job,
21 I'm not sure I would have suggested to try to unscramble
22 that egg.

23 Anyway, the AI reads, "The Staff Director

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1 shall submit the names of any individuals whom he/she
2 proposes to appoint as Deputy Staff Director or General
3 Counsel to the Commission. During the period of 30
4 calendar days after such submission, the Commission by
5 a vote of majority may reject such proposed appointments.
6 If the Commission fails to act during such periods, the
7 Staff Director thereafter may proceed with the
8 appointment."

9 You might -- that rule might be, I should
10 say, exercised in one way if it's a political appointment
11 and in a different way if it's a career appointment but
12 I don't see why it can't be observed, or couldn't be
13 observed.

14 Then the final point I'll just make is I
15 think given the importance of the General Counsel in
16 providing the Commission advice and individual
17 Commissioners advice from time to time, it would be a good
18 policy, at least, to allow Commissioners to meet the
19 candidate or have met the candidate. Anyway, I kind of
20 want to throw that out for your reflection and whether
21 you had looked at that language since the last meeting
22 and have had any thoughts on whether there's a way to
23 observe it in some manner.

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1 MS. SALLO: I did review it but my position
2 remains that it's a career status position and as the
3 hiring authority for the agency, I interviewed
4 candidates and I made the best choice based on what the
5 needs of the Commission are and he is an excellent
6 candidate.

7 COMMISSIONER GAZIANO: I hope that's the
8 case. I except that's the case. The other question is
9 what did you not follow the AI?

10 MS. SALLO: Because I take the AI as
11 referring to an appointment when it was a political
12 appointee just like the Deputy Staff Director. As it
13 applies to a career service, the Staff director has
14 always been the one to interview career service
15 applicants and to offer the jobs to the career service
16 applicant.

17 COMMISSIONER GAZIANO: Again, I'm not sure
18 that I see the AI is inconsistent with a career service
19 hirer. I'll let other Commissioners comment or other
20 Commissioners decide if they would like an opportunity
21 to meet with the General Counsel. I would think we might
22 want our thoughts on such candidates and I'm really
23 raising this more going forward as far as trying to make

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1 sure the AIs not looking for conflicts in AIs and other
2 regulations but always looking to observe the AIs.

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

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

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

21 I think those of you who have been involved
22 in federal government for the longest time know that it
23 is inappropriate for us as political appointees to engage

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1 in any process that impinges on the hiring of career
2 employees which this General Counsel is. What the AI may
3 say is not in my estimation something that is legally
4 allowed for us as Commissioners.

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

11 CHAIRMAN CASTRO: Commissioner Heriot.

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

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

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

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

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

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

20 I think that it would be good for
21 Commissioners to have at least a personal relationship
22 with them. Once Mr. Smith begins his service to the
23 Commission, I would suggest that the Staff Director and

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1 he discuss an appropriate way to maybe extend an
2 opportunity to those Commissioners who want to have a
3 meeting to get to know him.

4 We may all want to bring him up to speed.
5 For example, I might want to explain to him that we are
6 absolutely not an executive branch and he ought not to
7 make that mistake that so many people have in the past.
8 You all may have your own views that you would like to
9 at least make him aware of to make his job easier. From
10 your view you'll say, Gaziano thinks we're not an
11 executive branch. You better watch that." With that I
12 think we could move on to the agenda.

13 COMMISSIONER GAZIANO: Does that mean you
14 are going to be reappointed Commissioner?

15 CHAIRMAN CASTRO: That's for the speaker to
16 announce.

17 COMMISSIONER GAZIANO: Just wondered if
18 you had some news that we didn't have yet. We hope to
19 see you back.

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

23 Like you, Commissioner. We're going to

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1 move on to the formal agenda now which is, of course,
2 reviewing some State Advisory Committees.

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

4 **DELAWARE**

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

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

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

20 Do I have a second?

21 PARTICIPANT: Second.

22 CHAIRMAN CASTRO: Okay. Any discussion?

23 None. Okay. We'll take a vote.

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1 Commissioner Heriot, how do you vote?

2 COMMISSIONER HERIOT: Yes.

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

5 COMMISSIONER GAZIANO: Yes.

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

8 COMMISSIONER ACHTENBERG: Yes.

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

11 COMMISSIONER KLADNEY: Yes.

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

14 COMMISSIONER YAKI: Aye.

15 CHAIRMAN CASTRO: As do I and so the slate
16 passes unanimously.

17 **GEORGIA**

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

22 Samuel C. Burch.

23 PARTICIPANT: Mr. Chair, are you on the

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1 mic? I can barely hear you now.

2 CHAIRMAN CASTRO: My mic went off. Sorry
3 about that.

4 PARTICIPANT: Okay. That's fine.

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

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

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

22 Do we have a second on my motion?

23 COMMISSIONER KLADNEY: Second.

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1 COMMISSIONER GAZIANO: I have a question,
2 Mr. Chair.

3 CHAIRMAN CASTRO: Go ahead.

4 COMMISSIONER GAZIANO: I move to sever Mr.
5 Gonzalez from the list and I would like to address that.
6 It's in our practice, or at least Commission Yaki has
7 argued, that the severance doesn't need to be voted on.

8 CHAIRMAN CASTRO: Could you repeat that?
9 I'm sorry.

10 COMMISSIONER GAZIANO: I move to sever Mr.
11 Gonzalez and I think it's been our practice that the
12 severance is always understood under -- always effective
13 under our rules.

14 CHAIRMAN CASTRO: I think we've gone back
15 and forth on that and we haven't been consistent. Why
16 do you move to sever him?

17 COMMISSIONER GAZIANO: So that we can vote
18 on him separately.

19 CHAIRMAN CASTRO: Is there a second to that
20 motion?

21 COMMISSIONER HERIOT: I'll second it.

22 CHAIRMAN CASTRO: Why don't we deal with
23 that first before we deal with the full slate. What is

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1 your concern?

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

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

8 COMMISSIONER GAZIANO: Sure. Our record
9 from the August 17, 2012 briefing where Mr. Gonzalez was
10 a witness we had to ask him to change his statement
11 because he engaged in ad hominem attacks against fellow
12 witnesses. He compared fellow panelists to Ku Klux Klan
13 and Neo-Nazi.

14 CHAIRMAN CASTRO: Wait. Hold on a second.
15 Hold on a second. We have our lawyer who --

16 MS. HEPLER: That statement has not been
17 made public. Please contain your remarks to the
18 statement that is available on the internet and available
19 to the public.

20 CHAIRMAN CASTRO: Do you understand that,
21 Commission Gaziano?

22 COMMISSIONER GAZIANO: No, I didn't hear.
23 What was the --

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1 PARTICIPANT: We couldn't hear anything.

2 MS. HEPLER: Okay. This is what it is.

3 Can you hear me now? Is it on?

4 PARTICIPANT: No.

5 COMMISSIONER GAZIANO: No.

6 CHAIRMAN CASTRO: Just a second. Our

7 lawyer is giving us some legal counsel here on the issue.

8 Bear with us.

9 Why don't you use that microphone.

10 MS. HEPLER: Can you hear me now?

11 COMMISSIONER GAZIANO: Yes, I can hear now.

12 MS. HEPLER: Okay. The statement you're

13 referring to was not made available to the public so it

14 shouldn't be brought up in the public session and it

15 wasn't his final statement. The statement that you can

16 refer to in this meeting is the one that is available on

17 the internet and --

18 COMMISSIONER GAZIANO: It was a matter of

19 public record at that meeting because it came up that he

20 had to revise his statement.

21 MS. HEPLER: I don't -- you know, I'm not

22 aware of what went on. I wasn't at the meeting.

23 CHAIRMAN CASTRO: Just because a statement

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1 was revised, you cannot state what was taken out of
2 it --

3 MS. HEPLER: Right.

4 CHAIRMAN CASTRO: -- and add that to the
5 public record.

6 COMMISSIONER GAZIANO: It's impossible to
7 take it out of our head and so based on what is in my head
8 --

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

11 COMMISSIONER GAZIANO: Oh, okay. Well, he
12 engaged in ad hominem attacks. In his statement that is
13 filed and is on the internet he still engaged in ad
14 hominem attacks.

15 MS. HEPLER: That statement is open for
16 discussion here, that statement that's on the internet,
17 because it's a public record.

18 COMMISSIONER GAZIANO: We can't remove the
19 prior statement anyway. Let's just take the one that is
20 on the public record. He still engaged in ad hominem
21 attacks. Based on our standard whether someone has a
22 particular view or not, one of the most important things
23 we evaluated in past members was whether they can

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1 respectfully engage in dialogue in others whose opinions
2 they disagree with. I think Mr. Gonzalez having been
3 warned that his statements ran afoul of our defame and
4 degrade rule continued to engage in ad hominem attacks
5 is demonstrated quite clearly.

6 MS. HEPLER: Defame and degrade doesn't
7 mean -- that's an internal GC issue. Okay? Please --

8 COMMISSIONER GAZIANO: Listen.

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

12 COMMISSIONER GAZIANO: I'm not saying what
13 your opinion was. I'll tell you what my opinion was. He
14 still violated it. Regardless of whether he violated
15 it, he still engaged in ad hominem attacks against others
16 in his statement including fellow panelists who he
17 disagreed with.

18 That is just not the kind of person that we
19 have approved for SAC, let alone a SAC chair. I think
20 our public record is quite clear that once warned he still
21 can't resist engaging in ad hominem attacks. If he is
22 on SAC and especially if he's appointed to chair of the
23 SAC, I can't imagine how that will be a well-run good

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1 experience for anyone. Even those who agree with him
2 probably do not enjoy a chair who tries to shut down
3 people he disagrees with with ad hominem attacks.

4 MS. SOIL: May I --

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

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

11 COMMISSIONER GAZIANO: You're now --

12 CHAIRMAN CASTRO: Let me finish. Let me
13 finish.

14 COMMISSIONER GAZIANO: The General
15 Counsel --

16 COMMISSIONER GAZIANO: Some of the
17 speakers were given the opportunity to change their
18 statements and many did including Mr. Gonzalez. At the
19 even he did not, in my estimation, engage in ad hominem
20 attacks.

21 However, if that is the measure of anyone
22 serving on this Commission or a committee, then I think
23 there's even people at this meeting that would have

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1 disqualified themselves from attacks you all have made
2 on one another many times prior to my becoming Chair.
3 Let's look at this in a realistic practical way. You
4 have been a champion, Commissioner, of first amendment
5 rights and I respect that.

6 In fact, even in our bullying report you
7 stated while they cannot penalize students based on the
8 viewpoints they articulate, schools can insist the
9 students take care to express themselves appropriately
10 and constructively without profanities or epithets, for
11 example.

12 Now, it seems that your position on the
13 First Amendment has become malleable. I would say that
14 in this instance Mr. Gonzalez did exactly that. He acted
15 appropriately and constructively when he and others were
16 given a comment about taking care to express how they
17 express themselves. What he said at that meeting is
18 protected by his First Amendment rights and you as a
19 champion of that I would expect you to understand that.

20 Furthermore, I have seen Mr. Gonzalez in
21 action at the Georgia SAC meetings and I know for a fact,
22 and I know from other members of that committee that he
23 is very respectful of other people's perspectives and

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1 point of views and works very well with others. I think
2 the opinion that you have that he would do otherwise is
3 not only inappropriate but I think is something that
4 defames him.

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

8 CHAIRMAN CASTRO: We are going to let the
9 Staff Director say something.

10 COMMISSIONER GAZIANO: Let me respond to
11 your points.

12 CHAIRMAN CASTRO: Go ahead.

13 COMMISSIONER GAZIANO: You said that the
14 General Counsel did not rule he defamed and degraded, but
15 actually the General Counsel did rule that he defamed and
16 degraded.

17 Secondly, I think your characterization of
18 my First Amendment views, although somewhat
19 oversimplified actually supports what I'm saying.
20 Certainly the schools can ask kids to engaged in dialogue
21 in a respectful manner. We have that responsibility
22 when considering staff members.

23 That's been a grounds for us to reject staff members in

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1 the past and I supported that regardless of what their
2 view is.

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

8 Whether his subsequently filed testimony violated
9 the defame and degrade or not, I think his public
10 statement is further proof, you know, he doesn't engage
11 in dialogue in a respectful manner.

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

16 MS. SALLO: I would like to remind everyone
17 that our regional directors work with each and every one
18 of our SAC members on a daily basis. I have absolute
19 trust in each of my regional directors and the folks that
20 they put forth as reappointments. I know for a
21 fact that they would not reappoint someone, and Mr.
22 Gonzalez is a reappointment, if they felt in any way,
23 shape, or form that this individual could not be

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1 impartial at any of the meetings or they felt that the
2 individual throughout their two-year tenure had in any
3 way, shape, or form obstructed anything that was trying
4 to be done or at some point in time failed to cooperate
5 with other members of the SAC that were of a different
6 opinion than he is.

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

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

18 CHAIRMAN CASTRO: Okay. Anyone else?

19 COMMISSIONER YAKI: Yes, Mr. Chair. It's
20 Commissioner Yaki.

21 CHAIRMAN CASTRO: Yes, Commissioner.

22 COMMISSIONER YAKI: I had the good fortune
23 to meet with Mr. Gonzalez the day before his testimony

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1 and had a very good conversation with him about this and
2 many other things. I did not get the feeling this is
3 someone who certainly could not work well with others,
4 but I would just add that what we say, and I'm saying "we"
5 as all of us as Commissioners or civil rights activists,
6 as people who are in the public eye. What we
7 may say in a forum such as a hearing or a speech or, as
8 the Commissioner clearly pointed out, sometimes at each
9 other during a heated Commission meeting, it's harder
10 than when we sit down and we talk about how we work on
11 certain items. I do trust the judgment of the Staff
12 Director and regional directors in assessing Mr.
13 Gonzalez' character in working as a SAC member and as a
14 potential SAC chair. I have less concern about how
15 he comports himself in a setting where he is speaking on
16 his behalf at our request on important subjects versus
17 how he would act as a facilitator, moderator, and leader
18 of the SAC. I have every confidence that he'll be a very
19 good SAC chair.

20 CHAIRMAN CASTRO: Thank you, Commissioner.
21 I'm going call this motion to server for a vote. I vote
22 no.

23 CHAIRMAN CASTRO: Commissioner Heriot, how

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1 do you vote?

2 COMMISSIONER HERIOT: Yes.

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

5 COMMISSIONER GAZIANO: Yes.

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

8 COMMISSIONER ACHTENBERG: No.

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

11 COMMISSIONER KLADNEY: No.

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

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

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

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

22 Commissioner Heriot, how do you vote?

23 COMMISSIONER HERIOT: Aren't we going to

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1 have a discussion?

2 CHAIRMAN CASTRO: I thought we just did.

3 Do you have some other folks you want to discuss?

4 COMMISSIONER HERIOT: Not individually.

5 CHAIRMAN CASTRO: Okay.

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

10 CHAIRMAN CASTRO: Any other comments?

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

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

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

23 It was sent back before to make sure that

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1 it was more balanced as it applied to male/female and we
2 have now been able to do that. There was extensive
3 outreach. We received names also that we considered to
4 add on. I would ask the Commissioners to please move
5 forward and not hold up the Georgia slate.

6 CHAIRMAN CASTRO: Okay. Any other
7 comments?

8 COMMISSIONER HERIOT: Mr. Chairman.

9 CHAIRMAN CASTRO: Yes, ma'am.

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

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

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

21 COMMISSIONER GAZIANO: North Dakota will
22 have more and we are going to vote on that next, a number
23 of more conservatives, and I'm going to vote in favor of

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1 that. It's not a perfect science but we're doing the
2 best we can here and under the circumstances it seems
3 balanced, but if you don't feel it is, then vote against
4 it.

5 I'm going to call this motion for vote and
6 do a roll call.

7 Commissioner Heriot, how do you vote?

8 COMMISSIONER HERIOT: I vote no.

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

11 COMMISSIONER GAZIANO: No.

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

14 COMMISSIONER ACHTENBERG: Yes.

15 CHAIRMAN CASTRO: Commissioner Kladney,
16 how do you vote?

17 COMMISSIONER KLADNEY: Yes.

18 CHAIRMAN CASTRO: Commissioner Yaki, how
19 do you vote?

20 COMMISSIONER YAKI: Aye.

21 CHAIRMAN CASTRO: And I vote yes. The
22 motion passes four to two.

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

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NORTH DAKOTA

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

Dr. Cheryl Ann Longfeather Kerry, Cheryl Bergian, Marc S. Bluestone --

MS. SALLO: It's Dr. Cheryl Ann Kerry for chair.

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

MS. SALLO: Yes.

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

MS. SALLO: There's three more.

CHAIRMAN CASTRO: Sandra J. Boehler, David J. Lanpher, and Mark F. Tobin. Pursuant to this motion the Commission appoints Dr. Cheryl Ann Long -- Dr. Cheryl Ann Kerry Longfellow -- Longfeather.

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1 MS. SALLO: Yes.

2 CHAIRMAN CASTRO: Dr. Cheryl Ann
3 Longfeather Kerry.

4 MS. SALLO: She changes her name on the
5 application so my apologies.

6 CHAIRMAN CASTRO: Dr. Cheryl Ann
7 Longfeather Kerry as chair of the North Dakota State
8 Advisory Committee. These members will serve as
9 uncompensated government employees. Under this motion
10 the Commission authorizes the Staff Director to execute
11 the appropriate paperwork for the appointments.

12 Is there a second on that motion?

13 COMMISSIONER KLADNEY: Second.

14 CHAIRMAN CASTRO: Thank you. Any
15 discussion?

16 COMMISSIONER GAZIANO: This is
17 Commissioner Gaziano. Just briefly. This came up in
18 the last slate. Our rules and procedures suggest
19 ideological balance and, again, not party affiliation --
20 the use of party affiliation as a proxy for that. As
21 we've discussed in the past, it's a bad proxy and can
22 certainly be improved upon.

23 Even though there might be more Republicans

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1 than Democrats, yet again somehow we have I think more
2 people who have clearly liberal views than known
3 conservative views, but I'll probably abstain from this
4 one because I'm not at least confident that it is
5 ideologically imbalanced as the Georgia one was. This
6 could at least be a closer case but based on our review
7 of what is known, it still looks like it is a liberal
8 leaning panel.

9 MS. SALLO: May I?

10 CHAIRMAN CASTRO: Yes, Madam Staff
11 Director.

12 MS. SALLO: I did apply to each and every
13 slate that I review, especially with big states such as
14 North Dakota where you have such vast space between each
15 resident. One of the things that we do and we are
16 required to look at is also making sure that we have a
17 cross-section of individuals throughout the state.

18 With this particular slate we went as far
19 as to take a map of North Dakota and to actually map where
20 all of our applicants were coming from to make sure that
21 we had a vast cross-section of applicants from across the
22 state. There are a lot of factors that need to be taken
23 into consideration.

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1 We have to abide by FACA which also requires
2 us to look at certain factors as we are putting together
3 our state advisory committees. We did the best we could
4 with this one. We did a lot of outreach and so I would
5 ask for the Commissioners to move forward and accept this
6 slate as well.

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

9 Commissioner Heriot, how do you vote?

10 COMMISSIONER HERIOT: I vote yes on the
11 condition that we are not appointing a poet from Maine
12 by mistake.

13 CHAIRMAN CASTRO: Oh, yes. Of course.

14 Commissioner Gaziano, how do you vote?

15 COMMISSIONER GAZIANO: I abstain.

16 CHAIRMAN CASTRO: Commissioner
17 Achtenberg, how do you vote?

18 COMMISSIONER ACHTENBERG: Yes.

19 CHAIRMAN CASTRO: Commissioner Kladney,
20 how do you vote?

21 COMMISSIONER KLADNEY: Yes.

22 CHAIRMAN CASTRO: Commissioner Yaki, how
23 do you vote?

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1 COMMISSIONER YAKI: Aye.

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

5 Next item is the all-important adjournment
6 of the meeting.

7 COMMISSIONER KLADNEY: Excuse me, Mr.
8 Chairman.

9 CHAIRMAN CASTRO: Yes. Commissioner
10 Kladney.

11 COMMISSIONER KLADNEY: I would note that
12 this is the last meeting of Commissioner Gaziano's term
13 and I would like to thank him for his service here on the
14 Commission should he not return.

15 CHAIRMAN CASTRO: Indeed. I second that
16 motion.

17 Thank you, Commissioner Gaziano. Despite
18 our word sparing today, you'll be missed.

19 COMMISSIONER GAZIANO: Thank you all very
20 much.

21 CHAIRMAN CASTRO: Thank you.

22 **IV. ADJOURN MEETING**

23 CHAIRMAN CASTRO: So we have a motion to

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1 adjourn. Is there a second?

2 COMMISSIONER KLADNEY: Second.

3 CHAIRMAN CASTRO: All those in favor say
4 aye.

5 COMMISSIONERS: Aye.

6 CHAIRMAN CASTRO: Thank you. See you next
7 month. For the record, Commissioner Heriot votes no on
8 the motion to adjourn.

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

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