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U.S. COMMISSION ON CIVIL RIGHTS

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BUSINESS MEETING

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FRIDAY, AUGUST 18, 2017

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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 KLADNEY, Commissioner*
KAREN K. NARASAKI, Commissioner
MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director
MAUREEN RUDOLPH, General Counsel

*Present via telephone

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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
CARISSA MULDER
AMY ROYCE
RUKKU SINGLA
ALISON SOMIN
IRENA VIDULOVIC

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

(10:00 a.m.)

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

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1 Commissioners is present.

2 I see that the court reporter is present.

3 Mr. Staff Director, are you present?

4 MR. MORALES: I am present.

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

7 **I. APPROVAL OF AGENDA**

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

10 VICE CHAIR TIMMONS-GOODSON: So moved.

11 CHAIR LLAMON: Thank you. Is there a
12 second?

13 COMMISSIONER ADEGBILE: Second.

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

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

22 Second, I'd like to amend to add
23 consideration for a statement titled "The U.S.
24 Commission on Civil Rights Condemns the
25 Administration's Military Ban on Transgender

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1 Individuals."

2 Third, I'd like to amend to add a
3 presentation by California Advisory Committee Member
4 Rachel Sigman, who requested to speak to the
5 Commission to present her dissent on that Committee's
6 report.

7 Are there any other proposed amendments?

8 COMMISSIONER ADEGBILE: Madam Chair?

9 COMMISSIONER KLADNEY: Yes, Madam Chair.
10 I'd like to amend the agenda to add a statement that
11 has been circulated regarding asset forfeiture, the
12 DOJ's policy.

13 CHAIR LLAMON: Thank you. Commissioner
14 Narasaki?

15 COMMISSIONER NARASAKI: Yes, Madam Chair.

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

21 CHAIR LLAMON: Thank you. Commissioner
22 Adegbile?

23 COMMISSIONER ADEGBILE: I would like to
24 add a statement on Charlottesville on behalf of the
25 Commission, which has been circulated to the

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1 Commissioners.

2 CHAIR LLAMON: Thank you. Are there any
3 other proposed amendments? Okay. If there are no
4 further amendments, let's vote to approve the agenda
5 as amended. All those in favor say aye.

6 (Chorus of ayes.)

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

9 **II. BUSINESS MEETING**

10 **A. HEADQUARTERS REPORTS AND PROGRAM PLANNING**

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

17 VICE CHAIR TIMMONS-GOODSON: So moved.

18 COMMISSIONER ADEGBILE: Second.

19 CHAIR LLAMON: Terrific. Thank you. So
20 we'll now have a discussion on the motion. I'll start
21 by offering a few amendments, which we circulated
22 yesterday. My proposed amendments are to the
23 discovery plan and outline, adding language to specify
24 that the report should look at Section 208 of the
25 Voting Rights Act, which states that, "Voters

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1 requiring assistance because of blindness, disability,
2 or inability to read or write may be given assistance
3 by a person of the voter's choice."

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

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

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

19 To the outline I propose the following
20 four changes. First, after the Chapter 2 section
21 heading titled "Examine Trends in Section 203 Language
22 Minority Litigation," add "examine trends in Section
23 208, disability access litigation since 2006 VRA
24 reauthorization."

25 Second, in the subsection Voter Turnout

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1 and Registration, adding "and persons with
2 disabilities" after "limited English language
3 proficiency" in the first sentence in the first sub-
4 bullet.

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

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

12 Do I have a second for these amendments?

13 COMMISSIONER ADEGBILE: Second.

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

16 COMMISSIONER NARASAKI: Yes, Madam Chair.

17 I have two.

18 CHAIR LLAMON: Okay.

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

25 I would simply like to add voting

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

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

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

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

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

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1 thank the Commissioners for that accommodation.

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

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

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

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

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

21 Commissioner Adegbile, how do you vote?

22 COMMISSIONER ADEGBILE: Aye.

23 CHAIR LLAMON: Commissioner Heriot?

24 COMMISSIONER HERIOT: I vote yes.

25 CHAIR LLAMON: Commissioner Kirsanow?

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1 COMMISSIONER KIRSANOW: Yes.

2 CHAIR LLAMON: Commissioner Kladney?

3 COMMISSIONER KLADNEY: Yes.

4 CHAIR LLAMON: Commissioner Narasaki?

5 COMMISSIONER NARASAKI: Yes.

6 CHAIR LLAMON: Commissioner Yaki?

7 COMMISSIONER YAKI: Aye.

8 CHAIR LLAMON: Vice Chair Timmons-Goodson?

9 VICE CHAIR TIMMONS-GOODSON: Yes.

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

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

19 COMMISSIONER NARASAKI: I second.

20 CHAIR LLAMON: Thank you. Any discussion?

21 Hearing none, I will call the question and take a
22 roll call vote.

23 Commissioner Adegbile, how do you vote?

24 COMMISSIONER ADEGBILE: Aye.

25 CHAIR LLAMON: Commissioner Heriot?

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1 COMMISSIONER HERIOT: I vote yes.

2 CHAIR LLAMON: Commissioner Kirsanow?

3 COMMISSIONER KIRSANOW: Yes.

4 CHAIR LLAMON: Commissioner Kladney?

5 COMMISSIONER KLADNEY: Yes.

6 CHAIR LLAMON: Commissioner Narasaki?

7 COMMISSIONER NARASAKI: Yes.

8 CHAIR LLAMON: Commissioner Yaki?

9 COMMISSIONER YAKI: Aye.

10 CHAIR LLAMON: Vice Chair Timmons-Goodson?

11 VICE CHAIR TIMMONS-GOODSON: Yes.

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

14 **B. STATEMENTS**

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

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

23 The U.S. Commission on Civil Rights
24 expresses its profound dismay over the violent and
25 deadly events in Charlottesville, Virginia, between

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1 August 11 and August 13, 2017, motivated by racial and
2 religious intolerance.

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

9 We also mourn the deaths of State Trooper
10 H. Jay Cullen, 48, and Berke Bates, a day short of his
11 41st birthday, who died in a tragic helicopter crash
12 after they were dispatched to monitor the violence in
13 Charlottesville.

14 As Americans, we are committed to the
15 right to assemble peaceably, but we condemn racial,
16 ethnic, and religious hatred, incitement, and violence.

17 The events in Charlottesville stand as another tragic
18 and painful reminder that an ideology of racial and
19 religious intolerance can lead in an instant to
20 irretrievable acts of violence, death, and suffering.

21 As a nation, we have marched through
22 legally sanctioned slavery, secession, civil war,
23 reconstruction, KKK terror, internment of Japanese
24 American citizens, Jim Crow, and the civil rights era,
25 in pursuit of equality.

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1 Progress has come only through the courage
2 of individuals, not all of whom are remembered as they
3 should be, and with the resolve of our leaders and the
4 people alike, to stand for the rule of law, equal
5 protection and human dignity.

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

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

25 Chair Catherine E. Lhamon said, "Every

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1 American deserves to live confident in the expectation
2 that his and her equal dignity will be respected and
3 receive protection from government agencies.

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

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

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

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

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

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

25 CHAIR LLAMON: Do I have a motion? I was

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1 having discussion before the motion, but I don't
2 object to a motion.

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

6 CHAIR LLAMON: Would you like to move?

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

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

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

13 CHAIR LLAMON: Thank you. Is there a
14 second?

15 VICE CHAIR TIMMONS-GOODSON: Second.

16 CHAIR LLAMON: Is there any discussion?

17 COMMISSIONER HERIOT: I move an amendment.

18 CHAIR LLAMON: Okay.

19 COMMISSIONER HERIOT: Here is my motion.
20 I move that we add to the second paragraph at the very
21 end the following sentence, "Though we support
22 peaceful protest, and note that most of the counter-
23 demonstrators were peaceful, we condemn violence by
24 anyone, including violence by so-called antifa
25 demonstrators."

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1 CHAIR LLAMON: They don't call themselves
2 that, but they have been called -- anti-fascist
3 demonstrators have been called that.

4 COMMISSIONER KIRSANOW: Second.

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

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

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

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

23 COMMISSIONER YAKI: This is Commissioner
24 Yaki.

25 CHAIR LLAMON: Go ahead, Commissioner

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1 Yaki.

2 COMMISSIONER YAKI: While I certainly
3 understand the motivation of the amendment, that
4 violence by these right-wing groups should not be met
5 by violence.

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

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

21 There is -- there cannot be a place for a
22 President to do anything other than to not just
23 condemn what happened but to lend the full force of
24 the office of the President and the executive branch,
25 not just to prosecute those who became violent,

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1 because violence is their ideology, but to dig them
2 out root and branch, as we have -- as other
3 presidents, other attorneys general did before in
4 history.

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

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

23 So I would say that I will support the
24 statement as is. I will not support any changes to
25 it. But I would point out that we, as the Commission,

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1 should take to task this President, who has failed
2 abysmally in providing the clear direction and
3 leadership and moral center for this nation in the
4 situation where hate -- hate became the voice, the
5 motivator. It was not intolerance.

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

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

23 CHAIR LLAMON: Vice Chair?

24 VICE CHAIR TIMMONS-GOODSON: Commissioner
25 Heriot, I understand your statement, and I know and

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1 understand a little about writing. I'm at a loss to
2 understand why the first sentence in that paragraph
3 doesn't generally cover your concern. It says, "As
4 Americans, we're committed to the right to assemble
5 peaceably, but we condemn racial, ethnic, and
6 religious hatred, incitement, and violence."

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

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

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

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1 CHAIR LLAMON: Commissioner Narasaki?

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

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

16 So I just oppose it. Sorry.

17 CHAIR LLAMON: Commissioner Adegbile?

18 COMMISSIONER ADEGBILE: Yes. So this is
19 an important moment I think for the nation and for
20 this Commission. And I welcome the careful thoughts
21 and thinking of all of the Commissioners, many of whom
22 have given input into this statement that we are
23 trying to negotiate to assure that we can, to the full
24 extent possible, speak with a unified voice at a time
25 when it seems that the circumstances in the country

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1 could reasonably have the expectation that the United
2 States Commission on Civil Rights, to the full extent
3 possible, would speak with one clarion voice.

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

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

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

22 CHAIR LLAMON: I also want to be clear, I
23 was raised in the non-violent civil rights tradition,
24 and I strongly oppose violence and strongly believe in
25 non-violent civil rights protest where it is

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1 necessary. I think the statement is an eloquent,
2 strong, powerful statement of opposition to violence,
3 opposition to a racist ideology, and a return to the
4 nation's darkest past.

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

9 COMMISSIONER HERIOT: I would just like to
10 say that it is not the intention of this language to
11 water down the sentiments in the statement as a whole.

12 However, it very much is the intent of the proposed
13 amendment, my intent, to make it clear that there was
14 indeed violence by people against the -- I guess I'll
15 have to call them the Nazis and KKK, and both needs to
16 be condemned. So --

17 COMMISSIONER YAKI: This is Commissioner
18 Yaki.

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

21 CHAIR LLAMON: Okay. Commissioner Yaki?

22 COMMISSIONER YAKI: This is Commissioner
23 Yaki.

24 CHAIR LLAMON: Go ahead.

25 COMMISSIONER YAKI: I am sitting here in

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1 disbelief at this last statement, that the people who
2 used a car to mow down peaceful protesters --

3 COMMISSIONER HERIOT: Person.

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

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

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

25 The motion, as amended, is to vote on the

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1 statement with the sentence that Commissioner Heriot
2 has proposed, and I'm going to call for a roll call
3 vote on that motion now.

4 Commissioner Adegbile, how do you vote?

5 COMMISSIONER ADEGBILE: Nay.

6 CHAIR LLAMON: Commissioner Heriot?

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

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

14 Commissioner Kirsanow, how do you vote?

15 COMMISSIONER KIRSANOW: Yes.

16 CHAIR LLAMON: Commissioner Kladney?

17 COMMISSIONER KLADNEY: Yes.

18 CHAIR LLAMON: Commissioner Narasaki?

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

23 CHAIR LLAMON: Again, Commissioners, we at
24 vote.

25 COMMISSIONER KLADNEY: This is Kladney

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1 again. I apologize. I voted the wrong way.

2 CHAIR LLAMON: Oh. So your vote is --

3 COMMISSIONER KLADNEY: I vote no.

4 CHAIR LLAMON: Your vote is no. Okay.

5 thank you.

6 COMMISSIONER KLADNEY: I thought we were
7 voting on the statement. I apologize.

8 CHAIR LLAMON: Thank you. Commissioner
9 Yaki?

10 COMMISSIONER YAKI: No.

11 CHAIR LLAMON: Vice Chair Timmons-Goodson?

12 VICE CHAIR TIMMONS-GOODSON: No.

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

15 Do we want to move to reconsider the
16 statement?

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

19 COMMISSIONER HERIOT: That's still a
20 pending motion. That's the way Robert's Rules work.
21 It's still a pending motion. You don't have to re-
22 move it.

23 COMMISSIONER ADEGBILE: Fair enough.
24 Perhaps we should proceed to the vote on the motion
25 that has been moved.

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1 CHAIR LLAMON: Okay. Commissioner
2 Adegbile, how do you vote?

3 COMMISSIONER ADEGBILE: Aye.

4 CHAIR LLAMON: Commissioner Heriot?

5 COMMISSIONER HERIOT: I vote yes.

6 CHAIR LLAMON: Commissioner Kirsanow?

7 COMMISSIONER KIRSANOW: Yes.

8 CHAIR LLAMON: Commissioner Kladney?

9 COMMISSIONER KLADNEY: Yes.

10 CHAIR LLAMON: Commissioner Narasaki?

11 COMMISSIONER NARASAKI: Yes.

12 CHAIR LLAMON: Commissioner Yaki?

13 COMMISSIONER YAKI: Aye.

14 CHAIR LLAMON: Vice Chair Timmons-Goodson?

15 VICE CHAIR TIMMONS-GOODSON: Yes.

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

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

24 The U.S. Commission on Civil Rights
25 strongly disagrees with the Department of Justice

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1 recent decision to expand federal participation in the
2 practice of civil asset forfeiture. Civil asset
3 forfeiture defined as "the taking of property by law
4 enforcement without a criminal conviction" was sharply
5 curtailed by the Department in 2015.

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

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

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

24 The high cost of challenging a seizure
25 means there is no practical way to contest the seizure

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1 of such assets. In total, Nevada residents forfeited
2 nearly \$2 million in cash and property in 2016. As in
3 other states, law enforcement keeps a portion of this
4 money, which creates an inherent conflict of interest.

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

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

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

22 The Commission has recently investigated
23 similar conflicts of interest, raising serious civil
24 rights and access to justice concerns. In our
25 investigation of municipal fines and fees, the results

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1 of which the Commission plans to report in September
2 2017, the Commission examined conflicts of interest at
3 the municipal level when courts seek first to collect
4 money rather than administer justice.

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

10 Two of the Commission's advisory
11 committees, in Michigan and Tennessee, have taken up
12 the topic for review because of civil rights concerns.

13 Civil asset forfeiture has repeatedly been shown to
14 have racially disproportionate outcomes with a greater
15 effect on people of color.

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

24 The Commission urges the Department of
25 Justice to heed the many concerns raised about civil

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1 asset forfeiture and limit or, better for justice, end
2 the practice.

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

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

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

11 (Laughter.)

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

15 COMMISSIONER ADEGBILE: So moved.

16 CHAIR LLAMON: Is there a second?

17 COMMISSIONER NARASAKI: I second.

18 CHAIR LLAMON: Thank you, Commissioner.

19 Commissioner Adegbile, how do you vote?

20 COMMISSIONER ADEGBILE: Aye.

21 CHAIR LLAMON: Commissioner Heriot?

22 COMMISSIONER HERIOT: Aye.

23 CHAIR LLAMON: Commissioner Kirsanow?

24 COMMISSIONER KIRSANOW: Yes.

25 CHAIR LLAMON: Commissioner Kladney?

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1 COMMISSIONER KLADNEY: Yes.

2 CHAIR LLAMON: Commissioner Narasaki?

3 COMMISSIONER NARASAKI: Yes.

4 CHAIR LLAMON: Commissioner Yaki?

5 COMMISSIONER YAKI: Aye.

6 CHAIR LLAMON: Vice Chair Timmons-Goodson?

7 VICE CHAIR TIMMONS-GOODSON: Yes.

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

10 COMMISSIONER KIRSANOW: Madam Chair, I
11 seem to suffer from the same disability as
12 Commissioner Kladney. I'd like to revise my vote to
13 an abstain.

14 CHAIR LLAMON: Okay. Thank you.

15 COMMISSIONER NARASAKI: I thought you were
16 ruining your street credibility.

17 (Laughter.)

18 CHAIR LLAMON: Okay. So correcting our
19 record, the motion passes, one abstention, all others
20 in favor.

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

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1 Individuals."

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

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

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

24 Ironically, 69 years previously, on the
25 very same day, in 1948, President Harry S. Truman

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1 issued an executive order to desegregate the U.S.
2 military. President Truman then correctly recognized
3 that the nation's military strength and efficacy
4 depend on equal treatment of its troops.

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

11 The President's mere announcement of a ban
12 on transgender military service harms all Americans,
13 by sending a message that fosters and encourage
14 prejudice inconsistent with our core national values.

15 If implemented, the ban would further harm Americans
16 and weaken our defense by enshrining unequal treatment
17 of Americans based on rank stereotype.

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

23 The U.S. Commission on Civil Rights calls
24 on the United States to satisfy the civil rights
25 protections that are the responsibility and obligation

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1 of the Federal Government.

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

6 COMMISSIONER ADEGBILE: So moved.

7 CHAIR LLAMON: Is there a second?

8 VICE CHAIR TIMMONS-GOODSON: Second.

9 CHAIR LLAMON: Commissioner Adegbile, how
10 do you vote?

11 COMMISSIONER ADEGBILE: Aye.

12 COMMISSIONER YAKI: I have a question.
13 Commissioner Yaki.

14 CHAIR LLAMON: Yes, Commissioner Yaki. Go
15 ahead.

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

22 CHAIR LLAMON: What we know is that the
23 President has made the statement through Tweet, and
24 that that statement persists, that the statement --
25 our statement itself determines that the statement was

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1 announced, and then notes the ways that the
2 announcement itself are harmful and the ways that, if
3 implemented, the ban would be harmful.

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

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

12 Commissioner Adegbile, how do you vote?

13 COMMISSIONER ADEGBILE: Still aye.

14 CHAIR LLAMON: Commissioner Heriot?

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

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

21 Commissioner Kirsanow?

22 COMMISSIONER KIRSANOW: No.

23 CHAIR LLAMON: Commissioner Kladney?

24 COMMISSIONER KLADNEY: Yes.

25 CHAIR LLAMON: Commissioner Narasaki?

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1 COMMISSIONER NARASAKI: Yes.

2 CHAIR LLAMON: Commissioner Yaki?

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

5 CHAIR LLAMON: Vice Chair Timmons-Goodson?

6 VICE CHAIR TIMMONS-GOODSON: Yes.

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

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

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

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

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1 October term.

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

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

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

23 "In September 2016, a Federal Appeals
24 Court blocked the Ohio program for violating Section
25 8. A federal judge allowed purged voters who still

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1 lived in the same county to vote provisionally. The
2 State of Ohio has acknowledged that over 7,500 voters
3 cast votes in the 2016 Presidential election that
4 would have otherwise when purged from the voting
5 rolls.

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

13 "Chair Catherine E. Lhamon states, 'The
14 right to vote is fundamental in our American
15 democracy. The Commission will continue to uphold its
16 60-year mandate to protect that right, and remains
17 vigilant in ensuring the Department of Justice
18 fulfills its own mandate of enforcing federal civil
19 rights statutes."

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

22 COMMISSIONER HERIOT: There has been no
23 motion yet.

24 CHAIR LLAMON: Hearing none, is there a
25 motion to approve the statement?

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1 VICE CHAIR TIMMONS-GOODSON: I so move.

2 CHAIR LLAMON: Is there a second?

3 COMMISSIONER ADEGBILE: Second.

4 CHAIR LLAMON: Commissioner Adegbile, how
5 do you vote?

6 COMMISSIONER ADEGBILE: Aye.

7 COMMISSIONER KIRSANOW: What about
8 discussion?

9 CHAIR LLAMON: I called for discussion and
10 heard none.

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

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

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

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

21 COMMISSIONER KIRSANOW: Here we go. I'm
22 going to oppose this for two reasons. First is it
23 states that, although no facts or case law have
24 changed, and that is inaccurate, when the litigation
25 first began, Ohio's Board of Elections would monitor

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1 the voting rolls, and if there was inactivity in the
2 voter rolls for two years a postcard would be sent out
3 asking for confirmation of the person's residency
4 status.

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

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

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

22 And the second one is that maintaining
23 accurate voter rolls is, in fact, essential. Any vote
24 that shouldn't be had cancels out a vote that
25 legitimately should be had, and this is an effort to

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1 maintain the integrity of the voting roll in terms of
2 who is eligible to vote in a given jurisdiction.

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

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

19 CHAIR LLAMON: Commissioner Narasaki?

20 COMMISSIONER NARASAKI: The change that
21 you note, Commissioner, was actually acknowledged by
22 the federal court who noted, as I do, that that is not
23 actually the issue at hand. What the notice says is
24 actually irrelevant to the policy, and the policy is
25 focused on whether it is sufficient to remove people

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1 otherwise eligible to vote from the rolls simply by
2 mailing anything to them once.

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

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

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

24 There is also evidence where people have
25 admitted they voted in multiple jurisdictions, in

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1 addition to which the posture of this particular case
2 was that the injunctive stage -- in other words, we're
3 not talking about the merit stage -- this change could
4 well have a dispositive impact on the nature of this
5 litigation. For that reason, I say it's, number one,
6 inaccurate; and, number two, it would be, at best,
7 premature.

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

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

23 The real criminal is the fact that states
24 are underfunding voter administration and underfunding
25 the ability to upgrade their systems. That's the real

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1 problem here. They shouldn't be doing it in a way
2 that causes people who are otherwise eligible to vote
3 who then can't vote when they show up.

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

14 In addition to that, and in this
15 particular case, it's not as if there was some
16 draconian purge. The manner in which this happens is
17 a prepaid postcard is sent to individuals after two
18 years of voting inactivity simply saying, "Please
19 confirm that you are a resident of this state," or
20 words to that effect. Then there are several
21 mechanisms by which the person can, in fact, satisfy
22 the request. One is by return of that prepaid
23 postcard within the next four years or voting in the
24 next four years or registering to vote in the next
25 four years.

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1 Nonetheless, what happened in this case is
2 there was a change in the facts, and I would say that
3 it's premature to make a judgment on that until the
4 Supreme Court in fact weighs in.

5 CHAIR LLAMON: Commissioner Narasaki?

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

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

18 CHAIR LLAMON: Is there any further
19 discussion? Okay.

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

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1 ways, Commissioner.

2 CHAIR LLAMON: Okay. Calling the vote.

3 Commissioner Adegbile, how do you vote?

4 COMMISSIONER ADEGBILE: Aye.

5 CHAIR LLAMON: Commissioner Heriot?

6 COMMISSIONER HERIOT: I vote no.

7 CHAIR LLAMON: Commissioner Kirsanow?

8 COMMISSIONER KIRSANOW: No.

9 CHAIR LLAMON: Commissioner Kladney?

10 COMMISSIONER KLADNEY: Yes.

11 CHAIR LLAMON: Commissioner Narasaki?

12 COMMISSIONER NARASAKI: Yes.

13 CHAIR LLAMON: Commissioner Yaki?

14 COMMISSIONER YAKI: Aye.

15 CHAIR LLAMON: Vice Chair Timmons-Goodson?

16 VICE CHAIR TIMMONS-GOODSON: Yes.

17 CHAIR LLAMON: And I vote yes. The motion

18 passes, two Commissioners opposed, all others were in

19 favor.

20 We are four minutes before our scheduled

21 speakers at 11:00, so we will recess until 11:00 a.m.

22 and return to hear from our speakers about the history

23 of voting rights in this country.

24 (Whereupon, the above-entitled matter went

25 off the record at 10:56 a.m. and resumed at

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1 11:00 a.m.)

2 CHAIR LLAMON: We're back on track for our
3 11:00 a.m. presentation.

4 **E. PRESENTATION ON HISTORY OF VOTING RIGHTS**

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

9 President Johnson signed the Voting Rights
10 Act of 1965 into law 52 years ago this month on August
11 6, 1965. It is widely considered to be one of the
12 most significant and successful pieces of civil rights
13 legislation ever enacted and has been used to combat
14 varied voter suppression tactics, particularly
15 targeting communities of color and limited English
16 proficient voters.

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

22 In March 1965, President Johnson called for
23 the new voting legislation embodying the
24 recommendations of the Civil Rights Commission. Then,
25 in *State of South Carolina v. Katzenbach*, the Supreme

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1 Court rejected a challenge to the constitutionality of
2 the 1965 Voting Rights Act, in part relying on data
3 published by the Commission.

4 Since our first report on voting issues in
5 1959, we have issued 20 reports on voting rights, most
6 recently last fall on issues with the National Voter
7 Registration Act. Voting rights has been, and
8 continues to be, a central part of our Commission
9 charge and work.

10 I also note that today, August 18, marks the
11 97th anniversary of the ratification of the 19th
12 Amendment to the United States Constitution, which
13 gave women the right to vote.

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

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

25 She is Professor Mary Ellen Curtin, who is

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1 an associate professor with the Department of History
2 at American University. She specializes in voting
3 rights and has written extensively on modern African
4 American and women's social and political history.

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

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

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

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

25 So I'm just going to give the biography of

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1 Alexander Keyssar, who will also present, we hope,
2 when he arrives. He is the Stirling professor of
3 history and social policy at the Harvard Kennedy
4 School of Government, a Harvard trained historian.
5 Professor Keyssar specializes in voting rights and
6 election law history, as well as comparative working
7 class history. Before joining the Harvard faculty,
8 Professor Keyssar also taught at Duke, Brandeis, and
9 MIT.

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

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

24 Before hearing from our distinguished
25 speakers, I turn to Commissioner Adegbile at whose

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1 suggestion we commemorate the Voting Rights Act Month
2 today. And we welcome Professor Keyssar.

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

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

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

19 And I commend that to all who are listening
20 today, to go back and listen to the video or to read
21 those words because they have resonance today just as
22 they did and moved the Congress and the nation on the
23 strength of the demonstration made in Selma and
24 elsewhere, that the right to vote, as the Supreme
25 Court has said, is preservative of all other rights,

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1 and a right on which we place special significance.

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

10 Thank you.

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

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

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

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

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

24 (Laughter.)

25 DR. KEYSSAR: -- in several different parts

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1 of this building.

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

4 (Laughter.)

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

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

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

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1 and is automatic.

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

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

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

21 This has varied by state, but it is a broad,
22 broad set of patterns. There is an expansive period
23 from 1790 to roughly 1870, the 15th Amendment, but
24 even there, there are many exceptions. African
25 Americans get disenfranchised in most northern states

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1 between 1790 -- or between 1800 and 1850.

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

7 Then there is a broad period of contraction.

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

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

20 So you have a contraction period, you have a
21 broad expansion from World War II into the early
22 1990s, another big period of expansion, and then I
23 would argue that we are now living in a period of a
24 contraction of voting rights.

25 And there are a number of different signs of

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1 that, even though it's in an era of formally and
2 ideologically full enfranchisement, I think this is a
3 period when voting rights are more under threat than
4 the opposite.

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

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

21 The third point, the conflicts and patterns
22 of exclusion have always been along the lines of race,
23 class, and for a long time gender. Nobody has ever
24 attempted to disenfranchise upper or even middle class
25 white males. It simply hasn't happened.

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1 A lesson from there, if you take this
2 pattern, again, seriously, is that if you want to
3 preserve voting rights, you have to protect them.
4 It's not automatic. And here one can think of Justice
5 Ginsburg's reference in the *Shelby* case in her dissent
6 to, you know, it's like taking -- getting rid of your
7 umbrella because you're not getting wet. You need the
8 protections.

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

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

25 The Voting Rights Act had a precursor. It

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

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

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

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

23 I think we also need to keep in mind,
24 another little dimension that I want to put on the
25 table, is that strong opposition to renewal of the

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1 Voting Rights Act occurred in 1970, just five years
2 after it was passed. There was a major battle in
3 Congress over this, and at the heart of that battle
4 was the desire of many southern members of Congress,
5 as well as the Nixon administration, and some
6 conservatives from elsewhere, what they wanted to do
7 was to get rid of the pre-clearance provision. This
8 is the renewal in 1970.

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

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

25 Finally, let me dash into a few final

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1 comments about the present, and I mean these comments
2 to be suggestive and hopefully to provoke some
3 discussion, which is about why we seem to have entered
4 a new period of contestation in recent years. And
5 there are multiple reasons. I just -- I want to
6 suggest a certain kind of historical framing to it.

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

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

21 The first was that that period of
22 contraction took place in the wake of a major
23 expansion of the franchise to African Americans, okay?

24 It takes place in the wake of Reconstruction, okay?
25 After Reconstruction and after the passage of the 15th

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1 Amendment.

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

9 It's against that background of immigration
10 and African American empowerment in some places that
11 the nation witnessed the passage of innumerable state
12 laws designed to limit the political power of African
13 Americans and immigrants and immigrant workers --
14 literacy tests, understanding clauses, detailed
15 registration requirements, proof of citizenship laws,
16 as have shown up again in recent years, all of these
17 things that have appeared in the late 19th and early
18 20th century, and they worked in a lot of places, and,
19 again, not just in the south where we do know the
20 dreadful story.

21 What's less well-known is that New York
22 State, for example, passed an English language
23 literacy requirement to vote in 1921, and it remained
24 on the books through the 1960s; among other things,
25 making it impossible for Puerto Rican-born, Spanish-

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1 speaking residents of New York, of whom there were
2 hundreds of thousands, to vote.

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

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

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

19 Thank you very much.

20 CHAIR LLAMON: Professor Keyssar, thank you
21 very much.

22 Professor Curtin?

23 DR. CURTIN: Well, thank you very much for
24 having me here today, and I am here, as a good segue
25 from Alex's end, to talk about Barbara Jordan and the

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1 extension of the Voting Rights Act in 1975 and her
2 role in that.

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

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

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

21 When Jordan spoke those words, the nation
22 was in the midst of an impeachment crisis. One year
23 later, in the summer of 1975, President Ford had
24 seamlessly taken the place of the disgraced Richard
25 Nixon, but Jordan and others in Congress believed the

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1 nation faced another potential crisis, one that
2 threatened to undo the most important piece of
3 legislation to come out of the civil rights movement,
4 the Voting Rights Act.

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

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

18 Jordan was determined not only to renew the
19 Act, but also expand it to permanently ban literacy
20 tests, incorporate language minorities, include the
21 State of Texas under the oversight provided by Section
22 5, and extend it for 10 more years.

23 Many seasoned politicians and lobbyists
24 believed expansion was a risky strategy, that it might
25 cause the bill to fail altogether. But over the

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1 objections of many Texas politicians and Congressman,
2 Jordan joined forces with Representative Herman
3 Badillo of New York and Representative Edward Roybal
4 of California to push through a bill that renewed the
5 Voting Rights Act and set it on a new course.

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

12 Barbara Jordan was born in Houston, Texas,
13 in 1936, in a very stable, working class, Baptist
14 family. And she learned about politics at the Good
15 Hope Missionary Baptist Church located in Houston's
16 4th Ward, otherwise known as Freedman's Town. Until
17 she left Houston to attend law school in Boston,
18 Jordan grew up listening to the preaching of one
19 individual, the Reverend Albert A. Lucas.

20 Six feet tall, stout, with a commanding
21 voice, Lucas was an ordained minister educated at
22 nearby Conroe College and Fisk University. During the
23 Great Depression, Lucas was asked to lead the small
24 flock of Good Hope, and within a short amount of time
25 he built up a 2,000-member-strong congregation with a

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1 new stone church that dominated a city block.

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

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

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

24 Now, the white primary was an extremely
25 effective disfranchisement tactic. If they paid their

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1 poll tax, blacks in Texas could vote in the general
2 election, but they could not vote in the Democratic
3 Party primary because the party was allowed to exclude
4 black voters from membership.

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

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

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

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

20 Legal arguments that the white primary
21 violated the 14th and 15th Amendment had gone nowhere,
22 but white and the NAACP Convention revived the
23 fighting spirit of Reverend Lucas and his
24 congregation. A new plaintiff, a black dentist, from
25 Good Hope by the name of Lonnie Smith, sued county

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1 officials for the right to vote in the primary.

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

10 I am sure you know that in 1944 the Supreme
11 Court decided in *Smith V. Allwright* to end the white
12 primary, a decision of comparable importance to Brown.

13 But you might not know that the plaintiff and the
14 money to support the case came directly out of Barbara
15 Jordan's church in Houston, Texas.

16 After the victory in Smith, Thurgood
17 Marshall described the crowded excitement at Good
18 Hope. "Mass meeting on the night of the 11th was the
19 largest meeting I have seen in Texas," Marshall wrote.

20 "The church was packed at 7:00 for an 8:00 meeting.
21 The crowd outside was as large as the crowd inside.
22 The only way the plaintiff could get in the church was
23 by climbing through the window at the back of the
24 church."

25 Marshall had a feeling about what the Smith

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

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

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

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

25 Well, in 1959, Barbara Jordan returned to

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1 Houston after finishing law school at the age of 23.
2 She passed the Texas and the Massachusetts bar exams,
3 and then she joined a coalition of liberals, labor
4 organizers, and black and Latino activists, who sought
5 to change the Democratic Party away from its racist
6 past.

7 She went to work for the Kennedy campaign.
8 Her job: get black volunteers to register more voters.

9 One organizer remembered where she was really great
10 was recruitment. She would go to a church and make
11 one of those speeches, and we'd have volunteers
12 running out of there, people volunteering to be
13 registration clerks, and the results were phenomenal.

14 "From 15,000 black registered voters," he said, "we
15 wound up with over 60,000 registered to vote."

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

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

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1 the obstacles to electing black representatives.

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

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

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

24 But in 1966, the Texas legislature was
25 forced to reapportion itself. In *Reynolds v. Sims*,

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1 United States Supreme Court applied the one-man-one-
2 vote rule to state legislative districts. Population,
3 rather than area, determined the number of
4 representatives, and Houston was reapportioned,
5 creating a new single-member state senatorial district
6 where Jordan lived. She ran and she won. "Absent the
7 Supreme Court ruling, I would have lost again," she
8 testified.

9 Jordan never forgot the difference that
10 single-member districts had made to her life and to
11 her constituents. "We needed a victory," she stated.

12 "This is the only way. We've been talking a long
13 time, but they always come back and say, 'We don't see
14 anything. We don't win.' A victory in a body like
15 the State House will do more to help the Negro
16 recognize his voting strength than anything I can
17 think of."

18 When she made it to Congress, then, she was
19 determined that minority candidates should no longer
20 be thwarted by at-large districts and other
21 discriminatory practices. And when the 94th Congress
22 reconvened in early 1975, to start its new session,
23 the inclusion of language minorities, however, was not
24 part of the draft plan for the renewal of the Act sent
25 to Don Edwards, the Chair of the Civil Rights

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1 Subcommittee.

2 And with only seven months left until the
3 expiration of the Act, Clarence Mitchell, the lobbyist
4 for the NAACP, supported renewal without change. He
5 wanted to avoid a drawn-out battle that might endanger
6 the law altogether.

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

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

19 Jordan asserted that all forms of voting
20 discrimination suffered by blacks in the south were
21 also being suffered by Mexican Americans in the
22 southwest. The most egregious violations happened in
23 Texas, and it was more than just the lack of bilingual
24 ballots. When Mexican Americans tried to register in
25 one town, they were told the register ran out of

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1 printed forms. Polling places were located in white-
2 only spaces.

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

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

17 Jordan got the Congressional Black Caucus to
18 support the bill, but there was real opposition on the
19 Civil Rights Subcommittee. One amendment would have
20 excluded Texas on the grounds that, gosh, suddenly the
21 state legislature had hurried up and passed a
22 bilingual ballot law. But Jordan was not impressed.
23 "We need more than bilingual ballots," she said.
24 "That won't solve the problem of political, economic,
25 and invidious forms of discrimination."

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1 Knowing that they could appeal to the
2 Justice Department was a lifeline to Hispanic voters
3 in Texas. "The minority voters need the
4 psychological, spiritual, and emotional boost that
5 comes from knowing that you have a forum for
6 correction of abuses," she said.

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

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

22 Jordan took the time to sit down personally
23 with every member of the Texas delegation and explain
24 to them what this meant in factual terms, and to help
25 them understand from a policy point of view why she

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1 was doing this. And according to her aide, all she
2 was saying was, "Don't have a gut reaction, know what
3 you're talking about, and if you try and debate me on
4 this, I'm going to run all over you." In effect, she
5 was also telling them, "This is important to me."

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

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

21 Now, today we might look back and think, if
22 only we could achieve racial equity by abolishing the
23 white primary, or at-large elections, or putting
24 bilingual balance, how simple that would be. But
25 circumstances change, and history shows that with

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1 every step forward new and more sophisticated methods
2 of voter suppression can and will emerge.

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

7 For Barbara Jordan, the Voting Rights Act and Section
8 5 and language provisions were essential to her vision
9 of what the Constitution demanded if everyone, indeed,
10 was going to be included in We, the People.

11 Thank you.

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

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

19 Turning to you, Dr. Curtin, we are indeed
20 living in, as some would say, some interesting times.

21 I'm just curious if you have any thoughts about what
22 Barbara Jordan might say given the issues that we're
23 now facing in terms of voter suppression.

24 You've alluded to the fact that the
25 techniques and what we're seeing are more

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1 sophisticated. I wonder if you might offer any
2 thoughts on what she might say.

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

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

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

22 So I think however that occurs, she would
23 support.

24 VICE CHAIR TIMMONS-GOODSON: Thank you.

25 CHAIR LLAMON: Commissioner Narasaki?

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

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

16 I also wanted to ask Ms. Curtin a question,
17 because I have always been curious. One of the first
18 things I did when I came to Washington was work on the
19 1992 amendments to the Voting Rights Act, specifically
20 the expansion of Section 203, which was the language
21 assistance provisions.

22 And, you know, I was not surprised that
23 Latinos were covered. But at the time when -- in the
24 1970s, the Asian American population was still fairly
25 small. And I'm wondering if you have any insights as

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1 to how Asian Americans came to be covered. I have
2 always been curious.

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

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

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

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

24 It was just these triggers, and it didn't
25 have a specific race or -- so I think it was through

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1 negotiation that they wanted to -- they didn't want to
2 make it too broad, but they wanted to include -- I
3 think California was a concern.

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

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

13 COMMISSIONER NARASAKI: Thank you.

14 DR. CURTIN: Yes.

15 CHAIR LLAMON: Commissioner Adegbile?

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

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

25 And then, separately, I think that some of

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

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

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

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

25 And I try to explain the pattern, and I

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

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

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

23 And I think that what we're seeing, you
24 know, ways -- that are disturbing in a number of ways
25 is that in recent years the United States has been

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1 engaging in some prolonged wars without popular
2 mobilization. And we have a volunteer Army and not a
3 draft, and without much in the way of mobilizing
4 citizen support either. So it is different from the
5 historic pattern and worrisome.

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

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

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

22 But there is a partisan dynamic which at
23 first kind of worked -- can work in favor of
24 suppression, but then can be turned. And what happens
25 there is that if -- if you are a political party and

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1 you've been engaging in a strategy, or want to engage
2 in a strategy, or make it tough for certain kinds of
3 people to vote, you might continue that, you know, for
4 a while.

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

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

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

23 (Laughter.)

24 DR. CURTIN: The other case that you could
25 add to your list about important Texas cases, of

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1 course, is *White v. Regester*, which, you know, the
2 Supreme Court said, "You can look at outcome." You
3 know, and at-large, you know, voting is -- can be
4 racially discriminatory. So that came out of Houston
5 as well. So, and it was -- also involved Jordan and
6 her -- and her Senate district.

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

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

24 And so I think the combination of employment
25 and economic independence among the elites and also

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1 among the working classes who were in unions really
2 helped to fuel a sense of not just, you know, we're
3 citizens, but we deserve the franchise, and we are
4 going to fight thing this because the fight against
5 the white primary goes back to the 1920s.

6 You know, people had been trying for two
7 decades before, you know, the Smith case to overturn
8 this thing. And they had the money and the sense of
9 citizenship and entitlement to really pursue it.

10 And in terms of why they continued to come
11 out of Texas, I think on the other side the state
12 legislature is very reluctant, you know, to do more
13 than it needed to do. And so people went to the
14 courts in order to force it, and you had no shortage
15 of, also, besides labor unions, white liberals who
16 really did create a very special alliance with blacks
17 and Latinos in -- and labor in this period, in the
18 '60s.

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

25 DR. KEYSSAR: Can I just --

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1 CHAIR LLAMON: Yes.

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

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

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

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

21 You know, and as you may know, I mean, I,
22 for a number of years, have been, you know, supporting
23 the idea of a constitutional amendment to put a right
24 to vote in the U.S. Constitution, preposterous as that
25 might sound. But, you know, I don't think that's an

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1 idea that should be just thought of as either pie in
2 the sky or too fluffy. Constitutional amendments
3 work.

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

8 Well, thank you very much, Professor
9 Keyssar.

10 COMMISSIONER KLADNEY: No, thank you, Madam
11 Chair.

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

16 DR. CURTIN: Thank you.

17 DR. KEYSSAR: Thank you.

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

23 (Whereupon, the above-entitled matter went
24 off the record at 11:53 a.m. and resumed at
25 12:01 p.m.)

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1 CHAIR LLAMON: Okay. I'm calling us back
2 into our meeting just a little after noon.

3 **F. STATE ADVISORY COMMITTEES**

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

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

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

25 With this motion, the Commission will also

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1 appoint Chyleen Arbon as Chair of the Utah State
2 Advisory Committee.

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

8 Do I have a second for this motion?

9 COMMISSIONER NARASAKI: I second.

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

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

19 CHAIR LLAMON: Thank you. Commissioner
20 Heriot?

21 COMMISSIONER HERIOT: The Utah SAC is the
22 only SAC I'm going to be able to vote in favor of at
23 this time. I think we, again, have problems with
24 ideological balance, which is required by our
25 administrative instructions.

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1 And I'm started to get complaints from SAC
2 members at some of our SACs about the difficulties
3 they are having, feeling that they are being
4 ideologically isolated and having no effect. There
5 are a number of members of the Louisiana SAC who are
6 considering resigning.

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

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

10 COMMISSIONER KIRSANOW: Yes, Madam Chair.
11 Oh, I'm sorry, go ahead.

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

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

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

19 COMMISSIONER HERIOT: Okay.

20 MR. MORALES: Thank you.

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

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1 received about the balance of the SACs.

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

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

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

9 Commissioner Adegbile, how do you vote?

10 COMMISSIONER ADEGBILE: Aye.

11 CHAIR LLAMON: Commissioner Heriot?

12 COMMISSIONER HERIOT: Yes.

13 CHAIR LLAMON: Commissioner Kirsanow?

14 COMMISSIONER KIRSANOW: Yes.

15 CHAIR LLAMON: Commissioner Kladney?

16 COMMISSIONER KLADNEY: Yes.

17 CHAIR LLAMON: Commissioner Narasaki?

18 COMMISSIONER NARASAKI: Yes.

19 CHAIR LLAMON: Commissioner Yaki?

20 Commissioner Yaki, are you there?

21 Vice Chair Timmons-Goodson?

22 VICE CHAIR TIMMONS-GOODSON: Yes.

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

25 I now move that the Commission appoints the

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1 following individuals to the Hawaii State Advisory
2 Committee based on the recommendation of the Staff
3 Director: Nalani Fujimori-Kaina, Amefil Agbayani,
4 Robert Alm, Eva Andrade, Alphonso Braggs, Vernon Char,
5 Jennifer Dotson, Moses Haia, III, Luciano Minerbi,
6 Kymberly Pine, Randall Roth, Wayne Tanna, and
7 Jacqueline Young.

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

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

16 Do I have a second for this motion?

17 COMMISSIONER ADEGBILE: Second.

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

21 Commissioner Adegbile, how do you vote?

22 COMMISSIONER ADEGBILE: Aye.

23 CHAIR LLAMON: Commissioner Kirsanow?

24 COMMISSIONER KIRSANOW: No.

25 CHAIR LLAMON: Commissioner Heriot?

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1 COMMISSIONER HERIOT: No.

2 CHAIR LLAMON: Commissioner Kladney?

3 COMMISSIONER KLADNEY: Yes.

4 CHAIR LLAMON: Commissioner Narasaki?

5 COMMISSIONER NARASAKI: Yes.

6 CHAIR LLAMON: Vice Chair Timmons-Goodson?

7 VICE CHAIR TIMMONS-GOODSON: Yes.

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

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

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

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

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1 Do I have a second for this motion?

2 COMMISSIONER NARASAKI: I second.

3 CHAIR LLAMON: Thank you. Any discussion?

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

6 Commissioner Adegbile, how do you vote?

7 COMMISSIONER ADEGBILE: Aye.

8 CHAIR LLAMON: Commissioner Kirsanow?

9 COMMISSIONER KIRSANOW: No.

10 CHAIR LLAMON: Commissioner Heriot?

11 COMMISSIONER HERIOT: No.

12 CHAIR LLAMON: Commissioner Kladney?

13 COMMISSIONER KLADNEY: Yes.

14 CHAIR LLAMON: Commissioner Narasaki?

15 COMMISSIONER NARASAKI: Yes.

16 CHAIR LLAMON: Vice Chair Timmons-Goodson?

17 VICE CHAIR TIMMONS-GOODSON: Yes.

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

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

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1 Martinez, Jeffrey Milyo, S. David Mitchell, David
2 Rose, Eliza Straim, David Tyson Smith, Alisa Warren,
3 and Donna Wilson.

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

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

12 Do I have a second for this motion?

13 VICE CHAIR TIMMONS-GOODSON: Second.

14 COMMISSIONER KLADNEY: Second.

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

17 Commissioner Adegbile, how do you vote?

18 COMMISSIONER ADEGBILE: Aye.

19 CHAIR LLAMON: Commissioner Kirsanow?

20 COMMISSIONER KIRSANOW: No.

21 CHAIR LLAMON: Commissioner Heriot?

22 COMMISSIONER HERIOT: I understand some
23 effort was made here, so I'm going to abstain on this
24 one, although I think that the balance is really quite
25 bad.

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1 CHAIR LLAMON: Okay. Commissioner Kladney?

2 COMMISSIONER KLADNEY: Yes.

3 CHAIR LLAMON: Commissioner Narasaki?

4 COMMISSIONER NARASAKI: Yes.

5 CHAIR LLAMON: Vice Chair Timmons-Goodson?

6 VICE CHAIR TIMMONS-GOODSON: Yes.

7 CHAIR LLAMON: And I vote yes. The motion
8 passes, one Commissioner opposed, one Commissioner
9 abstained, all others in favor.

10 After passing these four slates, we now have
11 48 of our 51 advisory committees appointed and doing
12 their part to be the Commission's eyes and ears around
13 the country. That is a tremendous accomplishment, and
14 it will further justice and equality for all
15 Americans.

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

19 I hear the concern from Commissioner Heriot
20 and from Commissioner Kirsanow that we need to make
21 sure that each of the slates has the appropriate
22 balance. I know that we have been -- we, together
23 with the staff, have been working very hard toward
24 that end. And it may be that a push to pass as many
25 slates as we have passed in the last seven months has

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1 placed a strain on that, and I appreciate the staff's
2 effort still to move forward, so that we can have our
3 State Advisory Committees doing the bipartisan
4 effective, important work that they do on a volunteer
5 basis for us.

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

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

13 **C. PRESENTATION BY CALIFORNIA ADVISORY COMMITTEE**

14 **MEMBER NANCY EISENHART**

15 **ON THE COMMITTEE'S RECENT REPORT,**

16 **"VOTING INTEGRITY IN CALIFORNIA"**

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

22 Ms. Eisenhart?

23 MS. EISENHART: Yes. Well, good morning, I
24 mean, good afternoon, Commissioners. First, I want to
25 say that I was touched that you are acknowledging the

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1 anniversary of the 19th Amendment. That was important
2 to our family. My grandmother marched for the cause.

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

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

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

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

22 The one thing we knew to start with was
23 that California was the only state without a statewide
24 voter database, the one that was mandated in 2002 in
25 the Help America Vote Act called HAVA.

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1 It turns out the database failure was the
2 key factor in California's being ranked 49th out of 50
3 states in a 2012 Pew Charitable Trust Index on
4 election performance.

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

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

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

20 The Committee set a public hearing for
21 August 28, 2015, inviting key government officials,
22 appropriate groups and business leaders and public
23 witnesses. We collected and analyzed countless voting
24 incident reports all submitted under penalty of
25 perjury.

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1 After looking at all the evidence and
2 hearing the testimony, our initial observation was
3 that the state's failures in the administration of
4 justice and voting right issues fall into these
5 general categories: ignorance of the law, errors or
6 ineptitude or disregard of the law by intent.

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

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

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

25 Nevertheless, we are advising appropriate

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1 agencies to pursue these fraud incidents as reported
2 if the statutes of limitation hold up.

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

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

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

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

23 Officers of the Election Integrity Project
24 then testified to the many verified failures
25 associated with provisional and absentee ballots and

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1 online registration.

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

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

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

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

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

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

24 MS. EISENHART: My pleasure. Are there any
25 questions?

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1 CHAIR LHAMON: I think so. Commissioner
2 Adegbile?

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

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

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

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

23 COMMISSIONER ADEGBILE: What I saw on the
24 report was language on 19 that says an audit of voter
25 registration records in Los Angeles County following

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1 the 2014 election found a few dozen voters with
2 duplicate registration records, but did not find any
3 cases where people had actually voted twice in the
4 same election.

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

12 COMMISSIONER ADEGBILE: Thank you.

13 MS. EISENHART: You're welcome.

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

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

25 MS. EISENHART: Well, if you pull that out,

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1 that's like 45,000 mistakes for the number of people
2 that voted. So it's just an unacceptable attitude
3 about doing things the right way and according to law.

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

9 COMMISSIONER NARASAKI: Yes.

10 MS. EISENHART: We had one-third --

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

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

22 And there were many reasons for those
23 provisionals. Not that they're not entitled to do
24 that, but they are -- there's something wrong because
25 one-third of the people who voted were unhappy. They

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1 did not have a pleasurable experience.

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

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

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

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

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

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

24 I'm grateful to be in a position to
25 provide information that I hope will be used towards

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1 the protection and advancement of voting rights in
2 California.

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

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

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

22 Second, I'll explain, as has been already
23 talked about, how the delay in the production and the
24 release of the report has rendered a number of its
25 findings outdated.

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1 And third I'd like to discuss what I see
2 as a large disconnect between the report's conclusions
3 and the testimony provided by public officials at the
4 Committee's August 28, 2015, public hearing as well as
5 the state of knowledge about voting integrity in
6 California.

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

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

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

20 However, in reading the final report,
21 you'll see not only that the title has changed to be
22 about voting integrity rather than voting rights, but
23 there's not one reference to issues of minority voting
24 rights in the final report unless perhaps the author
25 is meant to include voters with disabilities and

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1 military service members in its minority category.

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

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

9 One example is that at the time of the
10 August 2015 public hearing, I personally lived over
11 500 miles away from the location of the hearing. I
12 was told there were no resources to support my
13 attendance. And there was no opportunity offered to
14 either call in or submit questions in advance.

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

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

24 Moreover, the meeting was scheduled at a
25 time when only seven of the 13 Committee members were

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1 able to attend. And according to the minutes of that
2 June 1 meeting, there was hardly any discussion about
3 the report before a vote was taken.

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

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

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

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

25 On several occasions, during her

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1 testimony, she noted that the Secretary of State's
2 office had already sought to resolve the issues noted
3 in the report, including the issues that made their
4 way into the conclusions regarding -- the report's
5 conclusions regarding the 2005 Memorandum of Agreement
6 with the Department of Justice.

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

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

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

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

24 I would point you to the transcripts from
25 the hearing, Page 231, Lines 18 and 19, when a member

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1 of this organization, while serving as a trained
2 volunteer poll watcher insisted five times on calling
3 the police to come to the polling station to settle
4 what appears to have been a very minor issue about
5 sharing a voter list. So clearly there is some effort
6 to disrupt on the part of that organization.

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

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

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

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1 general elections.

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

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

16 Thank you very much.

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

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

25 So what did you mean by that?

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1 MS. SIGMAN: Oh, I just meant the ratings
2 don't -- so the negative, the sort of negative view of
3 the ratings that come out of this for California are
4 not based on the election law compliance ratings.
5 California actually scored quite well on that. I
6 can't remember the exact score off the top of my head.

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

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

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

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

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

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1 brief presentation from you.

2 **D. PRESENTATION BY WISCONSION ADVISORY**
3 **COMMITTEE CHAIR NAHEED BLEECKER ON THE**
4 **COMMITTEE'S RECENT REPORT, "HATE CRIMES AND**
5 **CIVIL RIGHTS IN WISCONSION"**

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

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

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

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

25 Our Committee was so moved, inspired that

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1 we really wanted to follow-up and see not only how the
2 Sikh community had been impacted in the following
3 couple of years, but also learned about other hate
4 crimes in Wisconsin.

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

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

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

24 In our panel, we also learned about the
25 intersectionality of hate crimes and again, how

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1 underreported that may be and how exacerbated those
2 problems may be.

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

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

13 We really wanted to focus on hate crimes.

14 But in our report, you'll see that we did share
15 stories and a sampling of some of the other hate
16 incidents as well.

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

24 Again, we discovered underreporting. Also
25 often victims want to stay invisible when a crime is

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1 committed, a murder is committed towards an individual
2 and that person is again part of the LGBT community.

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

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

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

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

22 So that's my overview.

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

25 Are there questions from my fellow

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1 Commissioners? Commissioner Narasaki.

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

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

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

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

22 I'm wondering whether -- my perception in
23 terms of what happened after Oak Creek was the local
24 law enforcement was very quick to act appropriately.
25 And one of the things that we are trying to do with

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1 the hate crime review we will be doing is identify
2 police departments who are doing a good job. And I'm
3 wondering if you would have any to recommend from
4 Wisconsin.

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

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

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

13 COMMISSIONER NARASAKI: That would be
14 appreciated. Thank you.

15 MS. BLEECKER: Of course.

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

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

22 So I know that this report will be very
23 useful to the full Commission as we embark on that
24 process. I also was really struck by the inclusion in
25 the report of the community context in Wisconsin,

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1 specific both to the hate crimes topic that you were
2 addressing, but also to the challenge of your advisory
3 committee and the issues that you take up in your
4 state.

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

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

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

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

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1 grateful for your time.

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

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

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

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

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

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1 appointment to the Commission.

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

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

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

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

25 MR. MORALES: Thank you, Ma'am Chair. I

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1 appreciate your candor and as you mentioned some of
2 the challenges we have are common, and I've dealt with
3 over the past year.

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

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

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

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

24 So the purpose is to establish a policy
25 where if there's a vacancy the Commission can

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1 designate by a majority vote one of the Commissioners
2 to exercise the powers and functions on our behalf.

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

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

17 This is simply something about efficiency.
18 And the way it would work, we have circulated a draft
19 to everyone's staff and to the Commissioners several
20 days ago. What my special assistant has passed around
21 is a version that has an amendment that was made at
22 the suggestion of Commissioner Heriot, which would
23 make it clear in the scope of authority that the
24 person appointed designee would not be eligible to be
25 reimbursed for billable hours.

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1 We didn't have it in the original draft
2 because we think the law is pretty clear the way it
3 reads, that they wouldn't get it anyway. But we're
4 happy to clarify that.

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

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

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

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

19 CHAIR LHAMON: Do we have a second?

20 COMMISSIONER ADEGBILE: Second.

21 CHAIR LHAMON: So are there questions or
22 discussion? Okay. We'll move to a vote.
23 Commissioner Adegbile, how do you vote?

24 COMMISSIONER ADEGBILE: Aye.

25 CHAIR LHAMON: Commissioner Heriot?

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1 COMMISSIONER HERIOT: I vote no. I
2 appreciate Commissioner Narasaki's willingness --
3 sorry. I appreciate Commissioner Narasaki's
4 willingness to put that into the rule. I still think
5 this is likely to be regarded as inconsistent with the
6 Ishimaru case. And so I'm going to vote no at this
7 time.

8 CHAIR LHAMON: Commissioner Kirsanow?

9 COMMISSIONER KIRSANOW: No.

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

12 COMMISSIONER KLADNEY: Yes.

13 CHAIR LHAMON: Commissioner Narasaki?

14 COMMISSIONER NARASAKI: Yes.

15 CHAIR LHAMON: Vice Chair?

16 VICE CHAIR TIMMONS-GOODSON: Yes.

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

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

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