

UNITED STATES OF AMERICA

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COMMISSION ON CIVIL RIGHTS

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MEETING

+ + + + +

Friday, October 13, 2006

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The meeting was held in Room 540 of 624
Ninth Street, N.W., Washington, D.C., at 9:00 a.m.,
Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, CHAIRMAN

ASHLEY L. TAYLOR, COMMISSIONER

ARLAN D. MELENDEZ, COMMISSIONER

MICHAEL YAKI, COMMISSIONER

PETER N. KIRSANOW, COMMISSIONER

JENNIFER C. BRACERAS, COMMISSIONER

STAFF PRESENT:

KENNETH L. MARCUS, STAFF DIRECTOR

DAVID BLACKWOOD, ESQ., GENERAL COUNSEL

MANUEL ALBA, PUBLIC AFFAIRS UNIT

TYRO BEATTY, HUMAN RESOURCES DIVISION

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STAFF PRESENT (Continued):

MARGARET BUTLER, OFFICE OF CIVIL RIGHTS EVALUATION

CHRISTOPHER BYRNES, ESQ., OFFICE OF STAFF DIRECTOR

PAMELA DUNSTON, ADMINISTRATIVE SERVICES AND

CLEARINGHOUSE DIVISION

DEREK HORNE, ESQ., OFFICE OF STAFF DIRECTOR

SOCK-FOON MACDOUGALL, OFFICE OF CIVIL RIGHTS

EVALUATION

TINALOUISE MARTIN, OFFICE OF MANAGEMENT

BERNARD QUARTERMAN, ESQ., OFFICE OF THE GENERAL

COUNSEL

MICHELE YORKMAN RAMEY, IT SPECIALIST

RICHARD SCHMECHEL, SPECIAL ASSISTANT TO

COMMISSIONER MELENDEZ

KIMBERLY SCHULDZ, SPECIAL ASSISTANT TO

COMMISSIONER BRACERAS

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P R O C E E D I N G S

(9:10 a.m.)

CHAIRMAN REYNOLDS: Okay. This meeting will come to order.

This is a meeting of the U.S. Commission on Civil Rights at 624 Ninth Street, N.W., Room 540, Washington, D.C.

COMMISSIONER YAKI: Zip code?

CHAIRMAN REYNOLDS: No zip code.

With the exception of the Vice Chair, Abigail Thernstrom, all Commissioners are present.

I. Approval of Agenda

The first item on the agenda is the approval of the agenda. I would like to move to amend the agenda under Program Planning. I'd like to delete "Research on Academic Mismatch." That's not ready, and the same would be true for "Procedures for National Office Work Products." That's not ready.

So with that amendment is there a second?

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: Discussion?

(No response.)

CHAIRMAN REYNOLDS: All in favor say aye.

(Chorus of ayes.)

CHAIRMAN REYNOLDS: Any abstentions? Dissents?

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1 (No response.)

2 CHAIRMAN REYNOLDS: The motion carries.

3 **II. Approval of Minutes of August 18 Meeting**

4 Okay. The second item on the agenda is the
5 approval of the minutes of the August 18, 2006
6 meeting. May I have a motion approving the minutes?

7 COMMISSIONER KIRSANOW: So moved.

8 CHAIRMAN REYNOLDS: A second?

9 COMMISSIONER MELENDEZ: Second.

10 CHAIRMAN REYNOLDS: Discussion?

11 (No response.)

12 CHAIRMAN REYNOLDS: All in favor say aye.

13 (Chorus of ayes.)

14 CHAIRMAN REYNOLDS: Any objections?

15 Abstentions?

16 COMMISSIONER YAKI: Question.

17 CHAIRMAN REYNOLDS: Yes.

18 COMMISSIONER YAKI: The August 18th meeting, was
19 that the meeting where all of the votes were voided, a
20 lot of them?

21 MR. MARCUS: That was one of the meetings, yes.

22 COMMISSIONER YAKI: Okay, and are the minutes
23 being recalibrated to reflect that?

24 MR. MARCUS: The minutes do reflect that on page
25 4.

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1 COMMISSIONER YAKI: Okay.

2 CHAIRMAN REYNOLDS: Okay. Should we vote?
3 Okay.

4 **III. Staff Director's Report**

5 Okay. Mr. Staff Director, do you have anything
6 to report?

7 MR. MARCUS: Certainly, Mr. Chairman. I think
8 there are a few things that I'd like to report on.

9 First, as the Commissioners know, over the last
10 year and a half we've put in place a number of new
11 procedures and new controls, in order to address the
12 significant management and operations problems that
13 had been recognized in numerous audits. Including GAO
14 and OPM audits, and which we've been talking about
15 over the past years.

16 Our hope is not only to remedy the defects that
17 we've had in the agency, but ultimately to serve as a
18 model of excellence in government administration. And
19 to provide best practices that can be emulated
20 throughout the government.

21 I don't think that we have reached that yet,
22 with respect to all of our management and operations
23 issues, and we have still quite a number of challenges
24 to deal with, but we do have staff members who are
25 working diligently to try not only to correct past

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1 deficiencies, but to provide best practices.

2 I'm very pleased that our human resources
3 activities have been recognized through best practices
4 within the last month. In particular, our new
5 Director of Human Resources has put in place a
6 recruitment system to implement the OPM career
7 patterns, which has been recognized by OPM. They have
8 asked our HR Director to be one of three HR leaders to
9 provide best practices in a significant
10 intergovernmental meeting last month. They've also
11 asked to give other sorts of input from the Commission
12 based on our early experience getting very good
13 results from our application of the career patterns.

14 I think that we are indebted to our new Director
15 of HR, Tyro Beatty, who has come on board and helped
16 us to provide not just a remedy for weaknesses, but
17 for some early best practices that have already been
18 recognized.

19 CHAIRMAN REYNOLDS: Okay, and would you also
20 talk about the activity, the meeting that was held in
21 Connecticut by the Connecticut SAC?

22 MR. MARCUS: I'd be pleased to, Mr. Chairman.

23 I did have the opportunity to travel to Hartford
24 last month to attend the meeting of the Connecticut
25 State Advisory Committee. This is the first meeting

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1 of the newly chartered Connecticut State Advisory
2 Committee, and I think it is one of the most exciting
3 events that we've had in our State Advisory Committee
4 system, in quite some time.

5 The Connecticut SAC had been dormant for a
6 significant period. I spoke with long time members
7 who had never attended a Connecticut SAC event, simply
8 because, there had not been meetings in the past for
9 resource problems and other issues.

10 The Connecticut SAC, as you know, was very
11 recently re-chartered by this Commission. It was re-
12 chartered only last month, and I am pleased that the
13 event signaled that we have within the State of
14 Connecticut a newly vigorous presence. The meeting
15 was conducted in the State House in Hartford. It
16 featured participation by the Mayor of Hartford, a
17 senior representative of the Office of the Governor,
18 well known government officials at a municipal level,
19 and a wide variety of speakers representing different
20 perspectives, different political perspectives,
21 perspectives from different stakeholders, different
22 takes on the issue.

23 The issue was school choice, as a civil rights
24 issue. There were members of the panel who were not
25 familiar with the issue, and I think they learned a

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1 great deal. There were also members of the panel who
2 were rather expert on the topic, and even they learned
3 a great deal.

4 The panel itself, I think, worked together in an
5 exemplary fashion. It is a new group composed of both
6 returning members and also new members. It is, I
7 would say, an unusually distinguished group of with a
8 wide variety of individuals.

9 I was really pleased to meet some of these
10 people, who I think are among the leading citizens of
11 the state of Connecticut. They included the Pastor of
12 the First Cathedral Baptist Church in Bloomfield,
13 which is one of the largest churches in New England,
14 and certainly one of the largest predominantly
15 minority churches.

16 One of the leading civil rights litigators in
17 the state of Connecticut, the President of the
18 Connecticut Institute of the Blind, the Shelby Cullen
19 Davis Professor of American Business and Economic
20 Enterprise, a Chairman of the East End Community
21 Council and a Veteran of the Bridgeport Police
22 Department, a Legislative Analyst for the Connecticut
23 Latino and Puerto Rican Affairs Commission, the
24 Director of the Asian American Cultural Center at the
25 University of Connecticut at Storrs, the Indian

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1 Affairs Coordinator with the state's Department of
2 Environmental Protection, a tenured Professor of
3 Economics at the University of Connecticut, the
4 Executive Director of a think tank in Connecticut, and
5 an Environmental Attorney who chairs the Hartford
6 Federalist Society Chapter.

7 Some of these people had been on the committee
8 before. Many were new, but I think that the energy
9 and vigor and vitality and cooperation that they had
10 there was very pleasing to see. And, I think the
11 members of this Commission would have been pleased, if
12 they had had an opportunity to see them.

13 They were also, I would say, quite grateful to
14 the Commission for providing the resource and the
15 wherewithal to do it. I would commend Ivy Davis, the
16 Eastern Regional Office Director, for her leadership
17 and Barbara Delaviez, the staff person who spent so
18 many nights and weekends to put this together.

19 One other thing that I'd like to briefly mention
20 is that, we do not yet have appropriations for the
21 fiscal year. The Commissioners know that this is the
22 first Commission meeting of the new fiscal year. The
23 President's budget, I think, recognized some of the
24 advances we've made in management and operations by
25 requesting a modest increase for the agency. The

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1 increase was intended to enable us to hire two new
2 attorneys, provide a public service announcement, and
3 to provide some modest funds for state advisory
4 committee travel.

5 Unfortunately, while both Houses of Congress are
6 in the midst of developing our appropriations, at this
7 point, neither chamber is looking at numbers that
8 provide that increase. And in fact, both chambers at
9 this point have numbers that would be a cut in real
10 terms, even without consideration a rescission. So,
11 in future meetings we'll have to talk about
12 projections.

13 It could be that, some of the things that we
14 were planning to do for this new fiscal year, may have
15 to be scaled down. Including, for instance, the new
16 attorneys, the public service announcement, and some
17 of the expanded SAC travel. And, we'll have to
18 revisit that when we have actual numbers.

19 CHAIRMAN REYNOLDS: Any other questions? Yes.

20 COMMISSIONER YAKI: We're under a
21 continuing resolution right now, correct?

22 MR. MARCUS: That's correct.

23 IV. Program Planning

24 CHAIRMAN REYNOLDS: Okay. All right.
25 Next up, we're going to discuss the work for the

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1 Briefing on the Benefits of Diversity in K through 12
2 Education. May I have a motion, that the Commission
3 accept into the record, the panelist source materials
4 for the July 28th, 2006 Briefing on the Benefits of
5 Diversity in Elementary and Secondary Education, that
6 was distributed to Commissioners on September 1st,
7 October 4th, and October 6th?

8 COMMISSIONER BRACERAS: So moved.

9 CHAIRMAN REYNOLDS: Is there a second?

10 COMMISSIONER KIRSANOW: Second.

11 CHAIRMAN REYNOLDS: Discussion? Commissioner
12 Yaki.

13 COMMISSIONER YAKI: Just for the record, did we
14 set a cutoff date for when source materials were
15 supposed to be received? And, were all of the source
16 materials that we had that were distributed received
17 by the cutoff date?

18 CHAIRMAN REYNOLDS: That's a question for the
19 Staff Director.

20 MR. MARCUS: I'm sorry. I believe Commissioner
21 Yaki is asking about the Public Comment Period for the
22 comments on the K-12 Diversity Briefing; is that
23 correct, Commissioner Yaki?

24 COMMISSIONER YAKI: Yes, I am.

25 MR. MARCUS: The Commission has not established

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1 a Public Comment Period. There was discussion at a
2 prior meeting about whether there should be a 30-day
3 or, I believe, a 60-day period for public comment. As
4 I recall, the Commission adopted the 30-day, rather
5 than, the 60-day. But later determined, that there
6 were quorum issues so that neither, the 30-day nor the
7 60-day was adopted.

8 There was a prospect of a notational vote to
9 ratify the 30-day period, but at the request of one
10 Commissioner, that notational vote was not taken. So
11 we have not established either a 30-day or a 60-day
12 period, which is to say there is no Public Comment
13 Period.

14 However, we have accepted any comments that
15 we've gotten from the public, and I can tell you that
16 within the 30-day period from the time of the briefing
17 there were zero comments received. Within 60 days
18 there were zero comments received. We've received, in
19 fact, no public comment. So the question, whether it
20 should be 60 or 90 days is rather moot.

21 COMMISSIONER YAKI: I wasn't talking about the
22 public comment. I was talking about the source
23 materials themselves. In other words, one of the
24 things for which a record is open, is that if the
25 panelist says, "Well, I relied on Wikipedia," you

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1 know, whatever it was, and they submit it. That
2 becomes part of the record.

3 If they choose not submit it, I assume that it
4 goes into the ether, and it's not our job to go and
5 try and pull it together.

6 So my question is, we received two large packets
7 of information regarding this briefing, and I would
8 like to know exactly when we received each one? And,
9 how many days after the briefing they were received?

10 MR. MARCUS: We asked the panelists to provide
11 their source materials, and we received them and sent
12 them to the Commissioners fairly shortly after we
13 received them.

14 COMMISSIONER YAKI: So, I presume that the large
15 packet we received last week, was received some time
16 not too long before that?

17 MR. MARCUS: That's right.

18 CHAIRMAN REYNOLDS: And, that information will
19 be included in the records, the information that was
20 provided to the Commissioners.

21 MR. MARCUS: That's correct.

22 COMMISSIONER YAKI: All source materials?

23 MR. MARCUS: All of the --

24 COMMISSIONER YAKI: So anything referred to --
25 I'm puzzled by this because when you say the words

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1 "source materials," I just want to know how you define
2 that. Do you define that to be anything that a
3 panelist has cited as part of his or her testimony or
4 material that the panelist has subsequently provided
5 to the Commission, no matter what the date that is,
6 and whether or not that was adequately communicated to
7 every single panelist that that, indeed, is the case.

8 MR. MARCUS: I'm referring to all of the
9 materials that were provided by the panelists to the
10 Commission and which were subsequently distributed to
11 all Commissioners.

12 COMMISSIONER YAKI: You're avoiding my question.

13 MR. MARCUS: I think I'm answering your
14 question.

15 COMMISSIONER YAKI: I don't think so. My
16 question is, when we ask -- the way that you define
17 source materials would, therefore, allow anyone or
18 should allow anyone to submit materials to the
19 Commission for review regardless of the date.
20 Regardless, of how long after a briefing had been
21 done, outside 30 or 60 days, what have you. Because,
22 certainly the second batch was received I would say
23 more than 60 days afterwards.

24 The question I'm asking is I want to know
25 what the policy is because this is the first I'm aware

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1 that any source materials by any panelist may be
2 accepted at any time by the Commission for purposes of
3 review, discussion, and what have you, and certainly
4 this is the first time they were ever distributed to
5 Commissioners, whereas in prior meetings I think I
6 made a point that I had never seen some of the stuff
7 that had apparently shown up in one of the reports.

8 So I'm glad about that, but I'm trying to find
9 out what is the exact policy of the Commission with
10 regard to source materials by a panelist, and it goes
11 to this, which is that if it is an open ended item, I
12 think it behooves us to understand and to know that
13 there should be and can be other opportunities to
14 supplement panelists' testimony with further source
15 materials that perhaps they were unaware of and I was
16 unaware of.

17 CHAIRMAN REYNOLDS: Commissioner Yaki, I
18 don't believe that our past practice allows for
19 panelists to submit materials indefinitely. I don't
20 think that a panelist would have an opportunity to
21 supplement the record five years after we've published
22 a document.

23 So I think that your question rests on the
24 assumption that there is this indefinite period, or
25 are you asking the question is there an indefinite

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1 period?

2 COMMISSIONER YAKI: Well, there appears to
3 be an indefinite period subject to the fact that if
4 something gets published, that somehow becomes the
5 magical cutoff point, but even then if you were in
6 round one of edits of something and then a panelist
7 says, "Oh, I'm sorry. I forgot that I could have done
8 this, and here are 4,000 more pages of social science
9 research that you should be incorporating into this,"
10 blah, blah, blah, blah, blah, blah.

11 CHAIRMAN REYNOLDS: Okay. Ken, do you
12 want to shed some light on what past practices --

13 COMMISSIONER YAKI: I'm just saying the
14 reason I'm asking this is that it pertains very much
15 to the further discussion I wish to have on the K
16 through 12 briefing and where it goes from here.

17 CHAIRMAN REYNOLDS: Well, is this the
18 appropriate time to discuss it? Do you want to wait
19 until we -- well, no, let's just get it over with now.

20 Are you suggesting that we should have a
21 policy that has a deadline for when panelists can
22 submit their materials?

23 COMMISSIONER YAKI: I think that most
24 bodies that take testimony and take information should
25 establish a deadline, number one.

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1 Number two, if there's a different
2 deadline with regard to public comment versus
3 panelists, that should be differentiated as well
4 because in the -- this is just my own experience -- in
5 the world that I used to live in, a public comment
6 period is a public comment period that is for everyone
7 involved, no matter what the supplemental testimony or
8 what have you. And when that time came for when that
9 30 days was over, that was over. You couldn't say,
10 "Oh, I'm a panelist. Therefore, I get the opportunity
11 on day 31 or 32."

12 So, And I think that should be
13 communicated clearly to the panelists as well that
14 this is the magical time because otherwise it delays
15 our review, staff review, whatever review of other
16 materials that are out there.

17 CHAIRMAN REYNOLDS: Commissioner Yaki,
18 that makes sense, and I think that this conversation
19 is one that was initially started by, I believe,
20 Commissioner Braceras and Kirsanow basically and
21 Commissioner Melendez, the need to have some formal
22 rules in place regarding our briefings.

23 And we will discuss that, I believe, later
24 in the agenda, but on that particular issue, I agree
25 with you. I think that there needs to be a cutoff.

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1 Now, I don't believe that any panelist has
2 supplemented their testimony, you know, far off into
3 the future. So it's not clear to me that we --

4 COMMISSIONER YAKI: Well, that's where I would
5 beg to differ. I would say that the large volume of
6 materials that I received in the middle of last week
7 relating to the K through 12 briefing was, indeed,
8 July to August, September, two and a half months
9 practically from the time of the first briefing that
10 these materials showed up, and they showed up a few
11 days around the time that we were supposed to be
12 delivering comments on a first draft of a briefing
13 report.

14 CHAIRMAN REYNOLDS: Okay.

15 COMMISSIONER YAKI: So that's the point that I'm
16 making.

17 CHAIRMAN REYNOLDS: Okay, all right. Well, I
18 think you make good points, and I think that we will
19 cover this topic later on in this meeting.

20 Okay. Any other comments, questions?

21 (No response.)

22 CHAIRMAN REYNOLDS: All right. All in favor say
23 aye.

24 COMMISSIONER YAKI: Well, no, I still have a
25 question.

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1 CHAIRMAN REYNOLDS: I'm sorry?

2 COMMISSIONER YAKI: What source materials? Are
3 we talking about all of the sources materials? The
4 ones that are distributed September 1, 4th and 6th?

5 CHAIRMAN REYNOLDS: You're asking -- I'm sorry.
6 Rephrase the question.

7 COMMISSIONER YAKI: We are taking into the
8 record everyone's source materials?

9 CHAIRMAN REYNOLDS: All of the panelists.

10 COMMISSIONER YAKI: Okay.

11 CHAIRMAN REYNOLDS: Okay. All in favor say aye.

12 (Chorus of ayes.)

13 CHAIRMAN REYNOLDS: Objections?

14 COMMISSIONER YAKI: Aye, me. Sorry. I object.

15 CHAIRMAN REYNOLDS: Okay. Let the record
16 reflect that all voted in favor with the exceptions of
17 Commissioners Yaki and Melendez. The motion carries.

18 Okay. May I have a motion that the Commission
19 conduct the Commission briefing and business meeting
20 currently scheduled for November 17th on November 9th?

21 Under this motion, the Commissioners would be able to
22 provide comments on the draft briefing report
23 circulated on September 29th, 2006 and would vote on
24 the briefing report on November 9th.

25 Concurring and dissenting statements would be

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1 due on the 9th.

2 Is there a second?

3 COMMISSIONER TAYLOR: Did anybody move that?

4 You need a motion.

5 CHAIRMAN REYNOLDS: Okay.

6 COMMISSIONER TAYLOR: So moved.

7 CHAIRMAN REYNOLDS: Thank you.

8 COMMISSIONER KIRSANOW: Second.

9 CHAIRMAN REYNOLDS: Comments. Commissioner
10 Yaki.

11 COMMISSIONER YAKI: I'm going to start off. I
12 think Commissioner Melendez has more detailed
13 comments. I'm just going to start off by saying this
14 is nutty. When we received I don't know how many
15 hundreds, a thousand or so pages of additional source
16 materials in the first week of October on this issue.

17 When it was received, when it was implied that
18 it was relied upon in great detail for the draft, that
19 we have this artificially compressed time schedule
20 that is ad hoc and does not really follow any sort of
21 formal procedure other than simple expediency in terms
22 of the end game for the deadline with incredibly short
23 times for a dissent to be written given that the vote
24 will not be until the third and then ten days to do a
25 dissent on a document that if I were to estimate has

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1 about three to 4,000 pages of source materials, in
2 addition to the volumes of testimony during the
3 hearing.

4 I think this is a gross misuse of the briefing
5 process. A gross misuse. There is no process, and I
6 would just say that I have serious concerns about the
7 ability, my ability, to write a dissent in a short
8 period of time, wading through all of these materials,
9 given that the first draft, which is not going to be
10 obviously the final draft, was only distributed about
11 a week and a half ago.

12 CHAIRMAN REYNOLDS: Okay. In response, you will
13 have until, assuming that you dissent, November 9th to
14 write your dissent, and I agree that there is a lot of
15 material to wade through, and I also agree that the
16 burden for those who dissent are not the same as the
17 majority since you'll have to actually do the writing.

18 But the reason for the dates that have been
19 selected is that this is an important topic, a topic
20 that will be heard by the Supreme Court, and I think
21 that it's extremely important that the Commission
22 participate in the debate.

23 CHAIRMAN REYNOLDS: I think, with all due
24 respect, Mr. Chair, I think the idea of a month from
25 the time that we saw the first draft to the time a

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1 dissent is supposed to be written when the process
2 should allow us at least a month to review the draft
3 in the first place; I just think regardless of what
4 the deadline is for the Supreme Court, the fact of the
5 matter is that there's an integrity to the process
6 that's going forward, that should go forward and
7 should accompany what we do, and if we're simply
8 saying, "Well, gee, there's something hot going on
9 right now, So we're going to shift all of our gears.

10 We're going to essentially say to anyone who might
11 disagree, well, we're sorry that we and the entire
12 resources of staff and others to write this report for
13 you and look at 6,000 pages of materials, and you have
14 one month to figure out what it is we wrote and then
15 figure out how to do a dissent from that, I think, is
16 unfair.

17 CHAIRMAN REYNOLDS: Commissioner Melendez.

18 COMMISSIONER MELENDEZ: Yes. As you know, I
19 sent in the memo to most of the Commissioners. I was
20 more concerned about process as far as -- and time
21 frames also. I know that many times we don't have
22 enough time to respond, especially if things are
23 changing, if material is being sent into us and we're
24 asking a question of, well, what does that actually
25 mean; does it change the opinion of the draft report.

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1 And I ask the question of whether or not even
2 the A1 administrative instruction 1.6 applied to this
3 type, you know, the report process where it actually
4 states in there I believe we should have one month or
5 four weeks to actually comment. I believe that Staff
6 Director Marcus said that he did not feel that that
7 was applicable to the 1.6, Section 14 and all of those
8 different places that basically applied, the time
9 frames and all of those different things.

10 The other thing is that, you know, the question
11 would be whether or not when we get testimony, if it's
12 just basically writing a report that had everybody's
13 testimony, but if for some reason we start to alter
14 the report, such as in the native Hawaiians, where our
15 own staff starts to put in their own opinions on the
16 outcome of the briefing, you know, then I think that
17 the Commissioners, even myself, should be able to look
18 at that because we have a document that seems to
19 change.

20 And the question would be when do we actually
21 say that it's a closed report and nothing is going to
22 change, and then we can comment on that. But the way
23 I see it, things seem to gradually be changing with
24 submittals of the panelists, with time frames changing
25 as to when do we actually review what's being

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1 submitted.

2 So I have a real concern on time frames as to
3 our input, and I recognize that the Supreme Court
4 decisions or Supreme Court hearings are in place and
5 we're on the fast track, but we sure don't want to
6 send something up there that we're not all agreeable
7 to and that's irrelevant to the briefing and not
8 really are just opinions of staff within Civil Rights
9 Commission office here. So I do have a concern.

10 CHAIRMAN REYNOLDS: I'm sorry, and you --

11 COMMISSIONER BRACERAS: Can I speak to those
12 concerns?

13 CHAIRMAN REYNOLDS: Yes. Commissioner Braceras.

14 COMMISSIONER BRACERAS: Just a bit of history
15 about the process. When the new leadership at this
16 Commission was appointed, one of the first things we
17 did was establish a working group on reform to address
18 some of the procedural issues, and the rules that you
19 cite to are basically the rules that the working group
20 came up with to deal with Commissioner input and time
21 lines for reports coming out of hearings.

22 And so I agree with the Staff Director that they
23 don't apply to this particular situation. However, I
24 also agree with Commissioner Melendez and Commissioner
25 Yaki that there needs to be a process for these other

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1 types of reports because what we didn't anticipate
2 when we came up with those rules was that the model
3 that we use was going to shift. So we came up with
4 rules for reports that were not now currently making
5 the mainstay of our work.

6 And I do believe that the spirit of those rules
7 should apply to briefing reports, but one of the
8 reasons that we switched to the briefing report model
9 was not to avoid application of the rules, but in
10 order to be more timely and relevant and potentially
11 be cited more, and all of those other things, to be
12 able to do shorter, quicker, less labor intensive, but
13 more timely topics.

14 So I think that while we definitely need rules
15 and in many ways the rules will be similar to the ones
16 we've established for larger reports, they do need
17 some revision and tinkering to make them more
18 applicable to a briefing format.

19 And I'm a huge process person. So I hear your
20 concerns, and you know, my recommendation would be to
21 ask the Staff Director to try to revise the current
22 rules that are in place, revise them in a way that
23 will reflect the needs of the briefing process and
24 shorter time frames so that we can have those rules in
25 place as quickly as possible, hopefully by the

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1 November-December meeting, recognizing that the staff
2 is stretched and that putting together rules takes
3 time.

4 The only reason I don't recommend that it be
5 done at the working group level is because I think as
6 we've all seen, you know, we all have other jobs and
7 other demands on our time, and I think sometimes, you
8 know, establishing a working group can actually make
9 things take longer.

10 And so in the interest of addressing your
11 concerns quickly, I would ask the staff director to
12 come up with a set of rules that addresses process
13 within the next two months.

14 CHAIRMAN REYNOLDS: Commissioner Yaki.

15 COMMISSIONER YAKI: I appreciate what
16 Commissioner Braceras has said. I was part of that
17 working group on reform and fully participated and
18 felt included as part of that process under her
19 leadership.

20 I just want to say that Commissioner Braceras
21 described how the briefing issue involved, and
22 actually I remember that I was part of that movement
23 to push the Commission into doing briefings, but to my
24 chagrin, it's changed.

25 When we first talked about doing briefings, I

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1 think when you look at the AI, Section 12.01, that
2 pretty much sums up what I believe that briefings were
3 supposed to be. They would be used by the Commission,
4 quote, to provide Commissioners and the general public
5 insight into civil rights issues without the formality
6 of a hearing.

7 We understood we didn't have the budget to do
8 formal hearings. We talk about that all the time, how
9 much extra it costs, how much more time it takes, how
10 much more staff preparation and what have you.

11 But again, and maybe this is just my own
12 experience, but in the legislative world that I used
13 to exist in, briefings were just that. They were
14 briefings. They were for people to come give opinion,
15 give their insight, give their testimony, give their
16 what have you on an issue to illuminate it, shed light
17 on it, provoke further thought and debate.

18 What has happened during that time period and
19 why I'm concerned about what has happened to the
20 briefing process is that they've turned into mini
21 national reports, and I think Commissioner Braceras
22 hit it on the head. It's essentially becoming the
23 same type of thing, except that (a) without the
24 process attached to it and (b) it's more than just
25 this kind of a process. There's an integrity to the

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1 formal hearing or to the formal report process, which
2 gives a better data wash and review to the materials
3 that are presented.

4 I think the worse case in point was the Hawaii
5 report where we looked at findings and recommendations
6 that came out of nowhere for most of us in terms of
7 what the source materials were, who made the
8 interpretations and what have you.

9 And I think rather than simply say, "Well,
10 that's a fault of the staff," I think, no, it's a
11 fault of how briefings have been converted since the
12 original intent of this, and if they're being
13 converted into mini national reports, they need to be
14 treated like mini national reports for the purposes of
15 the intellectual and scholastic rigor that goes with
16 it.

17 That's why I have a fundamental problem with
18 this process. For example, the Adarand, which was our
19 first big report that we did, was a very inclusive
20 process. I dissented, yes, but I felt like I had
21 adequate time to review, to study, and that was
22 without an assistant, which I still do not have.

23 In this process, a report that is by the Chair's
24 own admission timed to coincide with a deadline for
25 essentially reply briefs for the Supreme Court cases

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1 in Seattle and Louisville, I am being given
2 substantially less time to discuss it, to understand
3 it, to review it, to critique it.

4 And, I mean, my dissent in Adarand was a two to
5 three-month process in the making. It was something
6 that started with the first draft. I started to think
7 about where we were going, what have you.

8 We got this first draft just what, a week and a
9 half ago, I think? Not much more. We had to have our
10 comments in by what, the ninth or something? I don't
11 know. It was an incredibly short period of time. The
12 last week of September and then the comments were due
13 the first week of October. Here we are barely in the
14 second week.

15 That to me really violates the spirit of what it
16 is we're trying to do and, I believe, runs a serious
17 risk of tainting the reliability, the academic and
18 scholastic rigor of a report that, again, by the
19 Chair's own statement, he wishes to be heard or be
20 seen or be cited or at least reviewed by those dealing
21 with the Supreme Court cases in Seattle and
22 Louisville.

23 And, you know, from September 28th, I believe,
24 to November 13th, start to finish, with a passel of
25 materials this big coming in the middle of that to

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1 deal with I think is difficult to justify.

2 CHAIRMAN REYNOLDS: Well, Commissioners Yaki and
3 Melendez, you've made some arguments that resonate
4 with I would say most of the Commissioners, if not
5 all. I think that in response to your strong
6 arguments, at least some of them, that we will --
7 well, I agree with most of what you said, but not all
8 -- but in any event, I think that Commissioner
9 Braceras' recommendation is a good one, and I think
10 that it will address many of the process issues that
11 you've just discussed, and in terms of the current
12 issue on the table, I think that rather than have the
13 meeting -- rather than move it to the ninth, we stick
14 with the 17th and provide an additional week after
15 that meeting for dissents and concurrences.

16 How do you respond to that as an attempt at
17 compromise?

18 COMMISSIONER YAKI: I need dates. I'm not too
19 sure what you just meant by the ninth versus the -- I
20 thought it was the third.

21 CHAIRMAN REYNOLDS: What I said was the meeting
22 would take place on the date scheduled, which is the
23 17th, and that dissents and concurrences would be due
24 on the 24th.

25 COMMISSIONER BRACERAS: Of?

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1 CHAIRMAN REYNOLDS: Of November.

2 COMMISSIONER BRACERAS: Of November?

3 CHAIRMAN REYNOLDS: Yes.

4 COMMISSIONER YAKI: What holiday does that run
5 into?

6 COMMISSIONER MELENDEZ: The 24th is Thanksgiving,
7 isn't it?

8 COMMISSIONER BRACERAS: Thanksgiving?

9 COMMISSIONER MELENDEZ: The day after
10 Thanksgiving.

11 CHAIRMAN REYNOLDS: All right, all right.

12 COMMISSIONER YAKI: Not that I have any aversion
13 to working through the turkey.

14 CHAIRMAN REYNOLDS: Okay. Well, how about this?
15 Let's make it the 27th.

16 (Pause in proceedings.)

17 COMMISSIONER BRACERAS: Can I ask a question?

18 CHAIRMAN REYNOLDS: Sure.

19 COMMISSIONER BRACERAS: While we're mulling
20 these dates, is there also a date by which comments on
21 the draft will be due and the second draft circulated
22 if there are going to be changes made, stylistic or
23 what have you, to the current document?

24 CHAIRMAN REYNOLDS: Okay. Since my picking
25 dates without consulting with staff may cause some

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1 problems, Ken, how would that approach affect you
2 folks?

3 (The Chair conferred with staff.)

4 MR. MARCUS: Mr. Chairman, if the meeting
5 continues to be on the 17th rather than the date you
6 had indicated earlier, then we would could do the
7 mail-out of the proposed final on the ninth. If we
8 use the ninth, then we would need to get Commissioner
9 comments on the second.

10 We can provide a revised draft by the end of
11 next week. We have not at this point gotten a lot of
12 comments from Commissioners. So the revised draft
13 that we would send by the end of next week will not
14 look terribly different from the first draft.

15 So you would have from the end of next week
16 until approximately the second for your second round
17 of comments, and then the proposed final on the ninth.

18 CHAIRMAN REYNOLDS: Okay. Does any --

19 COMMISSIONER YAKI: And then the vote would be
20 on the 17th?

21 MR. MARCUS: Yes.

22 COMMISSIONER YAKI: And then the dissents would
23 be due on the 27th?

24 MR. MARCUS: Twenty-seventh, and I would just
25 say pushing it a little bit there, it's pushing it a

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1 little bit in terms of getting the materials on the
2 Website in advance of the fifth. It should be enough
3 time, assuming that GPO maintains its regular schedule
4 during the holidays.

5 COMMISSIONER YAKI: Fifth of?

6 MR. MARCUS: I think we can get it done.

7 COMMISSIONER YAKI: Fifth of?

8 MR. MARCUS: December.

9 COMMISSIONER YAKI: Is there some magic to that
10 date?

11 MR. MARCUS: That makes the oral argument the
12 4th or 5th of December.

13 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

14 COMMISSIONER KIRSANOW: Mr. Chair, I just want
15 to make an observation as a follow-up to the comments
16 by Commissioner Braceras that we take a look at or the
17 Staff Director and the staff take a look at devising
18 rules with respect to the process by which briefing
19 reports are compiled. I think I wholeheartedly agree
20 with that recommendation.

21 The observation is just that in the context of
22 where the Commission has been and where it is now, the
23 manner in which briefing reports are put together is
24 not a stark departure from what had been done prior to
25 the working group formulating the current process. In

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1 fact, it probably provides as much, if not more,
2 integrity to the process by which hearing reports had
3 been put together in the past.

4 Not quite, but I just want to note that in the
5 past reports were put together and dissents also in
6 somewhat of a truncated fashion, in some cases to be
7 timely, and I think back to the Florida 2000 report
8 where copious information and data and a need to
9 reconcile conflicting analyses that were quite
10 detailed and complicated were done in a very short
11 time frame.

12 I think that I may be mistaken. Somebody can
13 correct me, but the dissent was crafted within a month
14 or so of the majority report being issued. That was a
15 significant issue that was being addressed and had the
16 context of a presidential election. There were expert
17 reports, and yet a hearing report was put together, a
18 dissent also.

19 And I think that the current briefing reports,
20 although I do think we need a response to what
21 Commissioner Yaki has indicated, a process suggested
22 by Commissioner Braceras to address briefings as
23 opposed to hearing reports; I think the end product,
24 while it could be improved, nonetheless is probably as
25 rigorous or close to as rigorous as what the reports

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1 were under the hearing regime previously.

2 COMMISSIONER YAKI: Is that damning with faint
3 praise?

4 (Laughter.)

5 COMMISSIONER YAKI: I mean, with all due
6 respect, one of the -- I mean, this was obviously one
7 of the concerns that I heard when I first joined this
8 body over a year ago and why I wholeheartedly
9 supported Commissioner Bracer's reform efforts to add
10 more layers of review, input, and comment for that.

11 So I'm sorry if I sounded facetious, but as my
12 wife told me before, "You're on no sleep, Yaki, you
13 really should think twice before you say anything
14 today."

15 COMMISSIONER KIRSANOW: I think that point is
16 that I'm not so sure that there is a dearth of
17 integrity in the processes by which we are putting
18 together the briefing reports. It can be improved,
19 but I don't think that it necessarily lays bare some
20 kind of huge defects with respect to the briefing
21 reports or the process by which we're getting there.

22 And I trust staff is doing -- we have
23 disagreements as to the outcomes on some of these
24 briefing reports, but I think the staff is doing a
25 good job in making sure that they have a certain

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1 degree of rigor attached to them.

2 COMMISSIONER YAKI: Well, I will second the
3 Chair's amended schedule.

4 CHAIRMAN REYNOLDS: Okay. So just --

5 COMMISSIONER MELENDEZ: A question I had. You
6 know, on the recommendation to put together a
7 procedure in some manner that is basically outside of
8 the administrative instruction, is that what we're
9 actually going to do?

10 And how does that become a valid procedure?

11 CHAIRMAN REYNOLDS: No, I don't think that's
12 what's being suggested. I think that we will --

13 COMMISSIONER BRACERAS: I didn't hear
14 Commissioner Melendez. I'm sorry.

15 COMMISSIONER MELENDEZ: Just going back to your
16 recommendation.

17 COMMISSIONER BRACERAS: I'm still stuffed up
18 from the plane.

19 COMMISSIONER MELENDEZ: Working on procedures,
20 because I had raised a question that the Staff
21 Director said that we don't really follow the
22 administrative instruction for these briefing reports.

23 The question would be if we're going to work on some
24 other procedure that has to do with review, legal
25 review and everything else having to do with comments,

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1 what basically type of procedure -- is that
2 incorporated into -- because this is the -- you know,
3 it seems like everything within the U.S. Civil Rights
4 Commission, a federal agency basically, just has to it
5 seems document every type of procedure that you have.

6 And your can't really -- it's one thing to have
7 kind of informal type, even if they were adopted
8 ourselves, to something that's internal, but when
9 we're sending out documents that are basically used in
10 Supreme Court cases or they are sent to Congress or
11 wherever. It would just seem to me that that has to
12 be in some way incorporated into some type of similar
13 administrative instructions even if, you know, the
14 validity of it --

15 COMMISSIONER BRACERAS: I think I can answer
16 that question. The thought is that we basically have
17 a framework in place that needs to be tailored to the
18 new model, and the Staff Director's office would take
19 a crack at revising the rules that we have, altering
20 time frames and the like, so that it would apply to
21 the briefing model.

22 And then that would be brought forward by the
23 Staff Director as soon as possible, but hopefully the
24 next meeting, for presentation to the Commissioners,
25 you know, distributed with the meeting materials

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1 beforehand, and we could vote on it or make changes to
2 it and then vote on it as a Commission, and we would
3 vote to have it incorporated as an administrative
4 instruction.

5 CHAIRMAN REYNOLDS: Okay. So two issues, I
6 guess the one issue, let's be clear on the dates. The
7 deadline for receiving comments would be November 2nd.
8 The mail-out would occur on November 9th. The
9 Commission meeting will remain as scheduled on
10 November 17th.

11 The dissents, the deadline for dissents and
12 concurrences would be the 27th of November.

13 COMMISSIONER YAKI: Okay.

14 MR. MARCUS: And the next staff draft will come
15 up by the end of next week.

16 CHAIRMAN REYNOLDS: Okay. So --

17 COMMISSIONER YAKI: I seconded that.

18 CHAIRMAN REYNOLDS: Okay. Very good. All in
19 favor?

20 (Chorus of ayes.)

21 CHAIRMAN REYNOLDS: Any dissents?

22 (No response.)

23 CHAIRMAN REYNOLDS: Any concurrences? The
24 motion passes unanimously. Thank you for your good
25 work, Commissioner Braceras. I like your

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1 recommendation that we tighten up our -- have some
2 formal policies with regard to how we do our
3 briefings.

4 Okay. May I have a motion that the Commission
5 accept into the record the materials received for the
6 September 8th briefing on racially identifiable school
7 districts?

8 Thus far we have received just one letter with
9 several attachments from Nebraska State Senator Ron
10 Raikes, who is the Chair of the Education Committee of
11 the Nebraska legislature.

12 May I have a motion?

13 COMMISSIONER TAYLOR: So moved.

14 CHAIRMAN REYNOLDS: Is there a second?

15 COMMISSIONER BRACERAS: Second.

16 CHAIRMAN REYNOLDS: Discussion? Commissioner
17 Yaki.

18 COMMISSIONER YAKI: I wasn't sure what I should
19 do with it. I got a gigantic package from one of the
20 people who was in the audience addressed to me full of
21 materials and other choice objects.

22 Would that be --

23 COMMISSIONER BRACERAS: What kind of choice
24 objects?

25 (Laughter.)

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1 COMMISSIONER YAKI: It wasn't Omaha State's.
2 That's all I can tell you.

3 I think it was addressed to me, but I think it
4 was also -- it seemed to be intended for the entire
5 Commission. I would like if we could incorporate
6 that. I think we will have it sent on to you
7 forthwith. I just realized that.

8 CHAIRMAN REYNOLDS: I assume that there are no
9 objections.

10 MR. MARCUS: We're talking only about documents,
11 correct?

12 COMMISSIONER YAKI: Yes.

13 MR. MARCUS: He's keeping the objects.

14 COMMISSIONER BRACERAS: The objects will remain
15 in your house.

16 (Laughter.)

17 CHAIRMAN REYNOLDS: Any other questions or
18 comments?

19 (No response.)

20 CHAIRMAN REYNOLDS: All in favor please say --
21 well, all in favor of the motion as amended by Yaki,
22 please say aye.

23 (Chorus of ayes.)

24 CHAIRMAN REYNOLDS: Any objections? Any
25 concurrences?

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1 (No response.)

2 CHAIRMAN REYNOLDS: The motion carries.

3 Mr. Staff Director, do you have an update on the
4 campus anti-Semitism public education campaign?

5 MR. MARCUS: Yes. Thank you, Mr. Chairman.

6 We continued working with the outside
7 organizations that I've referred to in prior meetings,
8 and in general I think that they are very excited
9 about the work that we are doing.

10 Staff have prepared a draft set of Web pages
11 that would be included within our general Website, and
12 these Web pages would address the issue of anti-
13 Semitism on campuses. We circulated that for comment
14 to the Commissioners a couple of weeks back. We've
15 also asked for input from various outside groups.

16 In general, the responses that we have gotten
17 have been very favorable, and they have gotten some
18 very positive kudos to the staff for the quality of
19 work, which I think is great.

20 Staff is continuing to fine tune the Web pages
21 in response to some useful, constructive criticism,
22 and we will shortly circulate another draft that is
23 revised in response to the comments we've received,
24 and I would hope to have a proposed final of those Web
25 pages available for a vote during the next Commission

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1 meeting.

2 In addition to the Web pages, the Commission is
3 aware that we have a poster that was approved during
4 the last meeting, and that the image and language from
5 the poster is also being used on a postcard that the
6 Commission previously directed the staff to prepare.

7 I'll circulate this, but the Commissioners will
8 see that the postcard has essentially the same image
9 and text as the poster. We've added the TDY number
10 for disabled persons as well as an E-mail address for
11 our complaint line. We'll probably increase somewhat
12 some of the text to make it more legible.

13 So we will have the poster. We will have this.
14 We will be sending out E-mails and have gotten
15 requests to speak with various students and student
16 groups and faculty. So I would say at this point the
17 feedback that we're getting has been very positive.

18 CHAIRMAN REYNOLDS: Any questions or comments?

19 (No response.)

20 **V. State Advisory Committee Issues**

21 CHAIRMAN REYNOLDS: Okay. Next up, we're going
22 to discuss the rechartering packages. We have three.

23 May I have a motion to recharter the Georgia State
24 Advisory Committee?

25 Under this motion the Commission appoints the

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1 following individuals to that committee based on the
2 recommendations of the Staff Director:

3 Charles Tanksley

4 Tony Boatwright

5 Alvin Culbreth

6 Julius Dudley

7 Herbert Garrett

8 Shannon Goessling

9 William Jordan

10 Ann Kasun

11 Luis Eguiarte

12 Arch Stokes

13 and Pamela White-Colbert

14 And with this motion, the Commission appoints
15 Charles Tanksley as the Chair of the newly rechartered
16 Georgia State Advisory Committee. These members will
17 serve as uncompensated government employees, and the
18 Commission, assuming that this motion passes, will
19 appreciate the hard work that they will contribute to
20 this SAC.

21 Under this motion, the Commission authorizes the
22 Staff Director to execute the appropriate paper work
23 for the appointment.

24 Is there a second?

25 COMMISSIONER MELENDEZ: Mr. Chairman, I had a

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1 question, I believe at the last meeting. I had a
2 concern about the rechartering of especially
3 Connecticut, and I believe when we agreed to not block
4 that on a notational voting, there was agreement that
5 we would discuss basically rechartering in general of
6 how that process actually works.

7 CHAIRMAN REYNOLDS: That's correct.

8 COMMISSIONER MELENDEZ: And maybe that should be
9 done before the vote on these.

10 CHAIRMAN REYNOLDS: Well, actually I assumed
11 that this would be the vehicle used --

12 COMMISSIONER MELENDEZ: Okay.

13 CHAIRMAN REYNOLDS: -- for that discussion.

14 So is there a second?

15 COMMISSIONER YAKI: So moved.

16 CHAIRMAN REYNOLDS: Thank you.

17 A second?

18 COMMISSIONER BRACERAS: Second.

19 CHAIRMAN REYNOLDS: Discussion?

20 COMMISSIONER MELENDEZ: Okay. The whole process
21 on how the SACs are basically picked all the way down
22 was a concern that I had because when we did look at
23 the Connecticut SACs, there was a number of -- and
24 basically I believe that the recharter decision should
25 avoid, you know, bias and that we should create a

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1 diverse, active, and capable membership of the make-up
2 of the SAC.

3 I do have a concern as to the process in
4 general. If a person were to basically want to be a
5 State Advisory Committee person, who would that
6 actually occur? Is it a top-down or bottom-up?

7 Because I know that even with the regional
8 directors not even being in place out in Western
9 Region, I believe, Mr. Pilla there is basically
10 holding down the fort. I think he's basically second
11 in command. I don't think some of the regions even
12 have directors.

13 As to how the names are actually put forth, I
14 know that the staff director has some involvement in
15 working with the different regional directors as to
16 how that list is put together, and in looking at some
17 of the rechararters, you know, some of them basically
18 lack number of women. I believe the outcome of some
19 of those actually have only two women on some of the
20 rechararters that we looked at in these packages, and I
21 think the question would be: is it something that's
22 basically determined within each state or is it
23 basically driven by the central office here as to the
24 list, you know, that goes out to the different states?

25 Because I think that even the State Advisory

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1 Committees themselves, they have no idea as to who's
2 going to be sitting on their board. It's probably
3 somebody else making those recommendations.

4 I'm just thinking it should be bottom-up, that
5 the people within each respective state probably can
6 put forth names, or how would we as commissioners?
7 Are we supposed to be able to put forth names to these
8 rechartering because we would know basically some of
9 the regions or where we come from?

10 I just wanted to talk a little bit about the
11 process of getting a more diverse and well rounded --

12 COMMISSIONER BRACERAS: And if I could just
13 speak sort of generally, and I know the Staff Director
14 can answer the specifics of the process. You know,
15 we do have rules in place, and we did revise our
16 policy for SAC selection and adopt a very specific set
17 of goals and objectives. So there are rules in place.

18 At the time that we adopted those, our goal was
19 to have race and gender neutral criteria for
20 selection, obviously with the goal of viewpoint
21 diversity on the SACs, and with the goal that, you
22 know, all of the members are interested in and
23 committed to civil rights issues.

24 But our goal was to strive for viewpoint
25 diversity and to have race neutral criteria because we

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1 felt that, you know, we certainly didn't want to
2 allocate slots on the SACs by quota. So we
3 specifically sought to eliminate rules that might be
4 interpreted that way.

5 As for how individual members are selected, I
6 know in the past I've, you know, given a name or two
7 of somebody who I thought might be interested. Marti
8 Castro, who's on the list today for Illinois, is
9 somebody that I originally recommended. You know,
10 he's not from my political party. He's much more
11 liberal than I am. He's a community activist, and
12 somebody with whom I share a great interest in issues
13 that affect the Hispanic community, but somebody with
14 whom I often find myself disagreeing with on political
15 matters.

16 But I knew him to be a person committed to civil
17 rights issues and a person who would be interested in
18 serving, and so I passed his name along, and I'm sure
19 that any other Commissioner, you know, should
20 certainly feel free to do that.

21 But the Staff Director can speak more
22 specifically about the process, but just to address
23 your concern about whether there is a process, the
24 answer is yes, and I believe a very well thought out
25 one.

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1 And to answer your concern about diversity, we
2 have, you know, developed a policy that's race and
3 gender neutral.

4 COMMISSIONER MELENDEZ: But I guess you only can
5 have 11 people on each advisory board. Let's say
6 there's 17 that --

7 CHAIRMAN REYNOLDS: Is that true?

8 COMMISSIONER MELENDEZ: -- make application, and
9 we look at their resumes, which I think should have
10 something to do with their interest in serving on
11 civil rights because I read some of the one in
12 Georgia this morning, reading what their interests are
13 and their background and different things, but the
14 question would be how are those actually selected
15 because I know that doesn't seem like the state
16 advisory chairman or whether or not there's five
17 people still on the board and there's six new people
18 coming on, whether or not it's actually the Regional
19 Director that really basically makes a decision
20 narrowing it down from 16 to 11 people or is it the
21 staff director here or is it something that we review
22 the 15 and throw our ten cents into who the 11 should
23 be?

24 That's what I'm kind of getting at as to who
25 would make that decision so that it could be -- and I

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1 don't know if anybody really looked into it before,
2 but I'm just saying that it's kind of coming to the
3 forefront because these are basically four-year terms
4 now; is that right?

5 MR. MARCUS: That's correct.

6 COMMISSIONER MELENDEZ: Four-year terms as
7 opposed to two. So I think --

8 MR. MARCUS: No, I'm sorry. They remain two-
9 year terms, but we have a pending recommendation to
10 expand it to four-year terms.

11 COMMISSIONER MELENDEZ: It could end up there.
12 So I'm just saying I think we need to really look at
13 the process and be able to have input if that's part
14 of our role as Commission.

15 MR. MARCUS: I'd be happy to answer if I may.

16 COMMISSIONER MELENDEZ: Sure.

17 MR. MARCUS: There are, it's s a very
18 complicated question. So I'll just try and take a
19 stab at it and I'd be happy to take follow-up as well.

20 We do have a process. As Commissioner Braceras
21 pointed out, it was extensively revised over the
22 course of the last year. So it's a newly reworked
23 process, and it's a process that now intends to be
24 race and gender neutral and to bring in a wide range
25 of viewpoints and to bring fresh new perspectives into

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1 the committees.

2 The members are appointed by the Commission.
3 The ultimate responsibility in the selection is with
4 the Commissioners. Commissioners vote yes or no, and
5 in the past occasionally Commissioners would, if they
6 were unsatisfied with the proposals, would vote no and
7 give recommendations that the staff go back and find
8 this or that. Sometimes there were no Republicans or
9 no this or not that.

10 The recommendations are made by the Staff
11 Director. So the Commission typically votes based on
12 the recommendations of the Staff Director.

13 As Staff Director, I rely on various staff
14 members to assist me in developing my recommendations.

15 The primary people that I rely upon are the regional
16 directors. We have six regions. We have four
17 regional directors. For those two regions where we do
18 not have regional directors, the Staff Director is the
19 de facto acting regional director.

20 But as Commissioner Melendez points out, in each
21 of those two regions, I have very active senior
22 analysts who are very helpful in coordinating the
23 process for me in those areas.

24 The way that we have looked at the SACs vary
25 little bit from state to state and region to region.

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1 That has, in part, been based on the different needs.

2 For instance, we have some states where we are
3 building an entire committee from scratch because we
4 have no eligible incumbents.

5 In other states, we have only a small number.
6 so we have different things we need to look at.

7 Where we have a number of incumbent members who
8 are being considered for reselection, we have to look
9 at what is their background and what is needed in
10 order to provide balance. For instance, are they all
11 of one party and do we need to get people of another
12 party in? Do they have the full range of skill sets
13 and backgrounds that we're looking for?

14 Generally speaking, I try to let the different
15 regional staff be as creative as they can and
16 proactive in putting together committees, but I am
17 concerned to instill a sense of urgency because I
18 think it is very important that we move ahead quickly.

19 As the Commissioner probably knows, under the old
20 process we almost never were rechartering SACs. Most
21 of the time most SACs were not chartered for as far
22 back as anyone in headquarters can remember. So we're
23 trying to rectify that, even though we have fewer
24 resources and less money and staff.

25 We also did not have the sort of viewpoint

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1 diversity that is called for under the new procedures.

2 In terms of my involvement, I've tried to
3 encourage and coach the regional staff. I have
4 encouraged Commissioners to provide recommendations to
5 me, and many Commissioners have provided some names.
6 Those who have, I thank you and I encourage you to
7 keep them coming.

8 For those of you who have not yet provided any
9 suggestions, I would encourage you to please let me
10 know who you are aware of, and as with any manager, my
11 degree of involvement in the different tasks depends
12 on a whole host of factors, including how much time I
13 have available, how well things are going in a
14 particular state, whether a subordinate specifically
15 asks for me to help, whether I think that there's a
16 particular need in a particular region to get more
17 involved, whether I think I have value to add.

18 The Connecticut SAC I think is an excellent
19 example of one that came together very well, and I
20 think that the Georgia SAC as well as other sacs
21 within that region are also a good example of
22 excellent staff work.

23 COMMISSIONER MELENDEZ: Right. I guess the
24 question would be I think in the Connecticut SAC there
25 were a couple of women that seemed to be qualified,

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1 you know. So let's take that scenario. Would that be
2 something where a Commissioner would basically lay it
3 on the table and say, "Why weren't these two women who
4 seemed to be qualified not included or selected?"

5 Basically I don't think we get down to that type
6 of inquiry or we haven't.

7 COMMISSIONER BRACERAS: I'm sorry. Women who
8 were considered but not selected?

9 COMMISSIONER MELENDEZ: But not selected.

10 COMMISSIONER BRACERAS: Or just women you know
11 about who had interest?

12 COMMISSIONER MELENDEZ: No, they were actually -
13 - I believe they were in the -- could have been
14 selected or appointed by Mr. Marcus or the regional
15 director.

16 MR. MARCUS: We had a number of people in
17 Connecticut whom we looked at. There were 15 that I
18 recommended. Commissioner Melendez, you pointed out
19 that we need to have 11 members. In fact, 11 is the
20 minimum. Nineteen is the maximum. We have tended for
21 our smaller states, in general, to have numbers that
22 are closer to 11 and for larger often closer to 19.

23 The 15 that we chose I think were an excellent,
24 well balanced group. In addition to that 15, it is
25 true there were a number of people that we looked at,

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1 including both men and women. I think, Commissioner,
2 you may be referring to a couple of women that the
3 staff actually sent my way. There were also some very
4 talented, interesting men. There was one rabbi, a man
5 who -- we didn't have a rabbi, and I don't know that
6 we've got a rabbi in any committee, and he was very
7 well known.

8 COMMISSIONER YAKI: We do.

9 MR. MARCUS: There were the --

10 COMMISSIONER BRACERAS: We do?

11 COMMISSIONER YAKI: Yeah, I remember seeing him
12 in one of them.

13 MR. MARCUS: Okay. A staff member was
14 enthusiastic about the idea of bringing in a rabbi.

15 There were a couple of women. There was a
16 professor, I think, at Yale, and there's nothing wrong
17 with any of these people. Any of them would have been
18 terrific. It was just a matter of if we accepted all
19 of them, it would have been too many, which means of
20 the expense sometimes of bringing them all together,
21 plus the burden, you know, in terms of the time
22 constraints would have been too much.

23 In the ideal world I think I might have gone for
24 a number smaller than 15, but it was tough cutting it
25 beyond the 15. So it was just a matter of getting as

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1 close as I could to 11 or 12, but trying to get good
2 balance, trying to get viewpoint balance, et cetera,
3 et cetera.

4 CHAIRMAN REYNOLDS: Commissioner Yaki. I'm
5 sorry.

6 COMMISSIONER YAKI: Go ahead. I'll let
7 Commissioner Melendez finish. I'm sorry.

8 COMMISSIONER MELENDEZ: And my main concern is,
9 you know, when we're talking about either the top-
10 down, which would basically be you from the top
11 basically setting forth a list out to the regional
12 directors or either the regional directors start
13 getting more involved because they know their certain
14 region and they basically send you a number, a list,
15 and basically you kind of concur with them whether or
16 not these are -- that would be the bottom-up approach.

17 So if the two women, for example, were put forth
18 by the regional director, I guess that would be the
19 bottom up approach.

20 COMMISSIONER BRACERAS: It's discretionary. So
21 it can go either way. The names can be generated by
22 Commissioners or by the Staff Director or members of
23 his staff or by the regional directors, and it's
24 within his discretion. There's no rule that requires
25 him to accept the nomination of the regional director

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1 or that requires him to accept my suggestion. It's
2 within his discretion, and that's a process that we
3 discussed at great length and voted on, and so that's
4 how it works.

5 CHAIRMAN REYNOLDS: Yeah, I just want to add one
6 thing. The ultimate decision is ours.

7 COMMISSIONER BRACERAS: Right. We vote as a
8 body, collectively.

9 CHAIRMAN REYNOLDS: Commissioner Yaki.

10 COMMISSIONER YAKI: I just want to go on the
11 record as to why I had a problem with Connecticut, and
12 I appreciate what the Staff Director has said. My
13 issue though is that I find it hard to understand that
14 diversity of viewpoint includes three people in the
15 executive board of one organization, which is the
16 Yankee Institute for Public Policy, being of
17 comprising 30 percent or three out of ten of the new
18 nominees.

19 I have an issue with the fact that the number of
20 women is so low. Yes, you can be race and gender
21 neutral, but I think we should also understand that
22 especially for the State of Connecticut and its place
23 in the history of Supreme Court jurisprudence, having
24 a SAC that is at present 87 percent men and 13 percent
25 women is something that should put up red flags right

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1 away.

2 And then finally, and I am going to say this as
3 politely as I can, but I don't know if I'm --

4 CHAIRMAN REYNOLDS: Remember that you haven't
5 had much sleep.

6 COMMISSIONER YAKI: No, but I have triple
7 screened this so far, but I still don't know if it's
8 going to come out right.

9 I have a very, very deep issue that a member of
10 the new SAC is someone who heads an organization that
11 is unalterably opposed to the idea of (pause) --

12 COMMISSIONER BRACERAS: What is the
13 organization?

14 COMMISSIONER YAKI: -- of same sex unions, the
15 Family Institute of Connecticut. I think that this is
16 an organization whose Website I perused, who I believe
17 and, in fact, I hope one day -- I don't know when that
18 will be -- but I hope one day if I am still a member
19 of the Commission we would have a discussion about the
20 civil rights or lack thereof for the gay and lesbian,
21 transgender community, but I have --

22 COMMISSIONER BRACERAS: That's not within our
23 statutory mandate.

24 COMMISSIONER YAKI: Neither was -- neither were
25 the rights of the disabled until we put out a report

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1 on the people that dealt with the challenges faced by
2 people with disabilities.

3 COMMISSIONER BRACERAS: I think that is part of
4 our statutory mandate, isn't it?

5 CHAIRMAN REYNOLDS: I think it is.

6 COMMISSIONER YAKI: I think that --

7 CHAIRMAN REYNOLDS: I think he's making a
8 different point, but at one point it wasn't. I
9 believe that --

10 COMMISSIONER YAKI: No, it was not. It was not.

11 MR. MARCUS: I have to say there are issues
12 related to the gay and lesbian community that are
13 fairly within our jurisdiction.

14 COMMISSIONER YAKI: And in this we have someone
15 who advocates and rates legislators, puts out
16 bulletins, et cetera, that is unalterably opposed to
17 the rights of same sex unions, and that person is now
18 in our SAC, and I have a very severe problem with
19 that.

20 CHAIRMAN REYNOLDS: Are you suggesting that that
21 person should have been disqualified, especially in
22 light of the fact that there are many Americans who
23 share his view?

24 COMMISSIONER YAKI: Well, we really don't want
25 to go down that road, do we Mr. Chair?

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1 CHAIRMAN REYNOLDS: Oh, no, I'm just asking you
2 a question. Do you believe that someone who is
3 opposed to same sex marriage is ineligible to serve in
4 a SAC?

5 COMMISSIONER YAKI: I think I'm not saying that,
6 I would say for me, I would have asked to have a
7 separate vote on him. And, again, I don't think we
8 want to go down a road that says, well, a majority of
9 Americans may not believe these people or those people
10 deserve these kinds of rights. That's not a place for
11 me to be.

12 COMMISSIONER BRACERAS: I don't know if that's
13 what the Chairman was saying.

14 CHAIRMAN REYNOLDS: A fully informed debate
15 having all of the viewpoints represented, and I don't
16 see how we can have a fully fleshed out debate unless
17 all of the voices are represented.

18 COMMISSIONER YAKI: So does that mean that in
19 1957 the Civil Rights Commission should have had an
20 unalterable segregationist as part of us?

21 CHAIRMAN REYNOLDS: I think that all --

22 COMMISSIONER YAKI: Is that what you're saying,
23 Mr. Chair?

24 CHAIRMAN REYNOLDS: I am saying --

25 COMMISSIONER YAKI: Because if that's what

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1 you're saying --

2 CHAIRMAN REYNOLDS: No, no, no.

3 COMMISSIONER YAKI: -- then --

4 CHAIRMAN REYNOLDS: Let me tell you what I'm
5 saying. I am saying that all viewpoints should be
6 heard, and there is no point of view that should be --

7 COMMISSIONER YAKI: Viewpoints --

8 CHAIRMAN REYNOLDS: -- eliminated from the
9 discussion.

10 COMMISSIONER YAKI: -- can be heard, but to be a
11 member of the SAC, to be a member of the Civil Rights
12 Commission family, I have a very, very deep problem
13 with that, and that is my personal point of view.

14 I'm not imposing it upon you. I'm not asking
15 you to adopt it. I'm simply saying that I am very
16 proud of the fact that in my history as a legislator I
17 participated in civil unions in terms of officiating
18 at them. I come from a city that embraces that kind
19 of diversity, and it would be anathema for me not to
20 express my objection to inclusion of someone of that
21 mindset as a member of the Connecticut SAC.

22 CHAIRMAN REYNOLDS: Commissioner Taylor.

23 COMMISSIONER TAYLOR: A process question. Since
24 this is our decision, are we limited to voting on a
25 slate when we are receiving recommendations from the

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1 Staff Director?

2 CHAIRMAN REYNOLDS: No. I think that any -- if
3 there's an individual --

4 COMMISSIONER TAYLOR: Right.

5 CHAIRMAN REYNOLDS: -- that someone has a
6 particular problem with, that they could vote against
7 that particular individual.

8 COMMISSIONER TAYLOR: Well, from my perspective
9 at least, all of the concerns raised, I think we have
10 a forum to address all of them. That is, when the
11 particular SAC is brought to the table for a vote, if
12 we're not required to accept the entire slate
13 recommendations, we can do exactly what Commissioner
14 Yaki would like to do in this case, focus on
15 individuals, their backgrounds, and question them, and
16 I think that's a good debate to have, and I sense
17 we're a tempest in a teapot here because we have a
18 process in place to have these very discussions on
19 particular SACs, but I don't hear any concern related
20 to the Georgia SAC, which I thought was the motion on
21 the table.

22 CHAIRMAN REYNOLDS: That's true, but
23 Commissioner Yaki wanted to express his views on
24 certain aspects of the Connecticut SAC, and --

25 COMMISSIONER TAYLOR: Which we had agreed to as

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1 part of our discussion.

2 PARTICIPANT: Which I don't want -- if it's a
3 procedural defect, then it would apply to this Georgia
4 discussion, but if it's not a procedural defect, then
5 I don't want us to lose track of where we are on
6 particular SACs, and we can focus on the Georgia SAC
7 when it comes up or the Connecticut SAC when it comes
8 up.

9 PARTICIPANT: Well, so long as there is an
10 understanding we have a process in place to address
11 the concerns Commissioner Yaki has raised.

12 CHAIRMAN REYNOLDS: Okay. Additional questions,
13 comments?

14 COMMISSIONER MELENDEZ: Just a final comment
15 from myself, and the reason I raise this is because,
16 you know, it's the discretion of the Staff Director
17 playing a big role in the whole process. I just
18 wanted to let him know that, you know, we're going to
19 be looking at that, and if the process can be so that
20 we can have input into questionable people on there
21 like we've discussed here, that would be, you know,
22 something we would like to do or, you know, to make
23 sure that -- I'm just trying to make sure that it's
24 well balanced, you know, so that we don't question if
25 it's stacked along party lines or whatever was brought

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1 up or whether or not we don't have enough women, and
2 that's my main concern.

3 And so that I just wanted to just bring it to
4 the forefront so that we could have the discussion on
5 it and make sure that we could have input into the
6 SACs.

7 I think we're so busy that sometimes if we just
8 kind of rubber stamp the SACs the way it has been
9 going, but I think that we're going to be -- and I
10 know that we have a number of SACs we still have to
11 recharter. So we've only touched base with some of
12 those. So even if it's in the middle of the process,
13 I think we still need to kind of take into account
14 that there are issues there, and if we can streamline
15 the process or get more input, and that's the reason
16 we brought it up.

17 MR. MARCUS: Commissioner, I welcome your
18 involvement and share your concern about trying to get
19 the proper balance and want to take the invitation
20 that I've given to all of the Commissioners and make
21 it especially to you that if there are people that you
22 have in mind also or are concerned, please don't
23 hesitate to give me a call and let me know. I'd be
24 happy to work with you.

25 CHAIRMAN REYNOLDS: And there's very few

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1 decisions made around here where we don't rely on the
2 Staff Director's judgment. In my view the Staff
3 Director's judgment has been sound, but more
4 importantly, there is a checks and balance system in
5 place. We are the ultimate arbiters of what goes on
6 around here.

7 Okay. If there are no additional questions or
8 comments, all in favor of --

9 COMMISSIONER YAKI: Wait, wait, wait. On
10 Georgia?

11 CHAIRMAN REYNOLDS: That's correct.

12 COMMISSIONER YAKI: I have a problem -- I'd just
13 like to raise a question about one nominee.

14 CHAIRMAN REYNOLDS: Which one?

15 COMMISSIONER YAKI: Mr. Stokes. I find it very
16 interesting -- I find it very bizarre that someone
17 would say that discrimination is not a Democrat or a
18 Republican issue, blah, blah, blah, blah, blah.
19 "Civil rights should not be used as either a wedge
20 issue and easy to score political points. It should
21 be conducted in a manner similar to the building of
22 our nation's highways."

23 What the heck does that mean?

24 CHAIRMAN REYNOLDS: Okay. Well --

25 COMMISSIONER YAKI: I mean, I'm serious. If

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1 someone thinks that civil rights should be conducted
2 in a manner similar to the building of our nation's
3 highways, I don't think that person should be on a SAC
4 because I don't think that person understands what in
5 the heck they're talking about.

6 CHAIRMAN REYNOLDS: Well, I think we agree with
7 this individual and that civil rights is not a
8 Republican or Democratic issue.

9 COMMISSIONER YAKI: But should it be conducted
10 in a manner similar to building our nation's highways?

11 CHAIRMAN REYNOLDS: Well, I will admit --

12 COMMISSIONER BRACERAS: It's not the most artful
13 description, but I think he's trying to say it's an
14 American issue. It's not a --

15 CHAIRMAN REYNOLDS: Right.

16 COMMISSIONER TAYLOR: It thought he was trying
17 to say it should be filled by the lowest bidder.

18 (Laughter.)

19 CHAIRMAN REYNOLDS: And then he's suggesting
20 that there are certain ambiguities with that piece of
21 --

22 COMMISSIONER YAKI: In that case, with a big dig
23 there is no end to it.

24 CHAIRMAN REYNOLDS: If you're suggesting there
25 are certain ambiguities involved in that piece of the

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1 statement, I agree, but I don't think that that
2 disqualifies this individual.

3 Are there any other individuals you would like
4 to discuss?

5 COMMISSIONER YAKI: No, for now.

6 CHAIRMAN REYNOLDS: The whole slate, either the
7 whole slate or Stokes?

8 COMMISSIONER YAKI: No, I don't care. I mean,
9 again, you know, 73 percent men, 27 percent women. I
10 mean, it's just out of whack.

11 CHAIRMAN REYNOLDS: So the whole slate --

12 COMMISSIONER BRACERAS: But we specifically
13 established a policy to avoid bean counts.

14 COMMISSIONER YAKI: Of course, of course, but
15 73/27? I mean you can do better getting socks out of
16 a drawer in a random thing than doing that.

17 COMMISSIONER KIRSANOW: Just as a matter of
18 curiosity, what was the expression of interest in
19 terms of those who apply to these SAC members? Was
20 there a 50-50 split between men and women who wanted
21 to be SAC members or, you know, what was the pool?

22 COMMISSIONER YAKI: Well, we already know that
23 in Connecticut there were many more women nominated
24 than were chosen.

25 MR. MARCUS: I wouldn't agree with that

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1 characterization.

2 COMMISSIONER BRACERAS: I thought he said two.

3 MR. MARCUS: There were a couple of women who
4 weren't chosen. There were at least a couple of men
5 who weren't chosen, and perhaps more than that.

6 COMMISSIONER YAKI: I think the SAC chair said
7 that he nominated -- he suggested more than a couple.
8 Anyway.

9 COMMISSIONER KIRSANOW: And I state that, of
10 course, on the premise that, you know, I don't believe
11 we should be bean counting, and I wouldn't necessarily
12 revise my vote depending on what the response is.
13 It's just a matter of curiosity. I don't necessarily
14 think that we can look at the outcome and say 73
15 percent men and somehow that's flawed until we know,
16 you know, was there some type of affirmative
17 discrimination against women.

18 COMMISSIONER BRACERAS: But you need to know the
19 full --

20 MR. MARCUS: Here's what I can say.

21 COMMISSIONER YAKI: Eighty-seven, 13, 73, 27,
22 68, 35. That's a pattern and practice to me.

23 CHAIRMAN REYNOLDS: Oh, come on how.

24 COMMISSIONER BRACERAS: Oh, please.

25 COMMISSIONER YAKI: Come on. Seriously.

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1 CHAIRMAN REYNOLDS: Come on now. You're not --

2 COMMISSIONER BRACERAS: You can't have a pattern
3 and practice without knowing what the pool is. You
4 can't just look at the results.

5 COMMISSIONER YAKI: Well, then we need -- then
6 all I can do is look at the numbers. If I don't know
7 what the pool is, if I don't know what the outreach
8 was, if I don't know what --

9 COMMISSIONER BRACERAS: So you just want
10 proportional representation.

11 COMMISSIONER YAKI: -- how it was done.

12 COMMISSIONER BRACERAS: I'm saying that you can
13 surely do a heck of a lot better than three to one.

14 COMMISSIONER BRACERAS: If you have a
15 substantive problem with any of these SAC members,
16 then --

17 COMMISSIONER YAKI: I have lots of substantive
18 problems with a lot of --

19 COMMISSIONER BRACERAS: Then raise them. Then
20 raise them.

21 COMMISSIONER YAKI: -- a lot of these SAC
22 members.

23 COMMISSIONER BRACERAS: But the fact that
24 they're not the right sex is -- I'm not even going to
25 address that.

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1 COMMISSIONER YAKI: Well, I'm surprised you
2 wouldn't address it. I would be very -- I think that
3 -- I think that if the Civil Rights Commission is
4 supposed to be a body that -- well, that gets into the
5 whole philosophical issue.

6 COMMISSIONER BRACERAS: And we had that
7 discussion when we voted on the SAC rules.

8 COMMISSIONER YAKI: Which, of course, I opposed,
9 but I just think you can say a lot about blindness,
10 neutrality, what have you, but I'm just telling you
11 that the numbers are completely out of whack.

12 CHAIRMAN REYNOLDS: Well, you mentioned a
13 philosophical difference, and there is.

14 COMMISSIONER YAKI: So if these SACs were 99
15 percent Caucasian, you have no problem with it.

16 CHAIRMAN REYNOLDS: Or 100 percent women. I
17 want to know what they think. I want to know what
18 their views are. I want to insure that there is a
19 diversity with respect to ideas. That is the
20 important thing.

21 COMMISSIONER YAKI: Well, we seem to have a lot
22 of people from the Federalist Society in all of these
23 things.

24 CHAIRMAN REYNOLDS: Well --

25 COMMISSIONER YAKI: We had three Yankee

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1 Institute in one SAC in one state for ten nominees.
2 Where is the diversity? Where is --

3 COMMISSIONER BRACERAS: Can I just be perfectly
4 clear about something on the record --

5 CHAIRMAN REYNOLDS: Hold on here.

6 COMMISSIONER BRACERAS: -- about the Federalist
7 Society?

8 CHAIRMAN REYNOLDS: Hold on, hold on, hold on.
9 If you look at the ideological diversity of the SACs,
10 you don't have much. You don't have many members from
11 the Federalist Society or the Yankee Institute. By
12 putting them on these SACs, we are achieving
13 diversity, the diversity that we sorely lack today.

14 So there is no surprise that there is a spike in
15 the number of members from, say, the Federalist
16 Society, for example, because that viewpoint, that
17 point of view is not currently represented on the
18 majority of SACs.

19 COMMISSIONER BRACERAS: Let me just speak to
20 that because I think there's some confusion. The
21 Federalist Society doesn't take positions on issues.
22 There is no Federalist Society viewpoint. There never
23 was; there never will be. It's a Bar Association of
24 generally conservative and libertarian lawyers who
25 sometimes have wildly different views from each other

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1 on things like the War on Terror and other issues, and
2 it's basically a forum for ideas and for circulating
3 conservative and libertarian ideas. There are no
4 platforms. Unlike the ACLU, unlike even the American
5 Bar Association, the Federalist Society does not take
6 positions on issues.

7 So to say that somebody is a member of the
8 Federalist Society and, therefore, you know, shouldn't
9 be a member of a SAC or it's disturbing that they are
10 a member of a SAC --

11 COMMISSIONER YAKI: I'm not disturbed that
12 they're members of a SAC.

13 COMMISSIONER BRACERAS: It tells me --

14 COMMISSIONER YAKI: I am disturbed -- I am
15 disturbed that of the new nominees there seems to be a
16 preponderance or a disproportion of reliance upon
17 certain organizations for the membership of a new SAC.

18 I mean --

19 COMMISSIONER BRACERAS: Well, the Federalist
20 Society --

21 COMMISSIONER YAKI: Look, Jennifer --
22 Commissioner Braceras. We're not going to agree on
23 this. This goes into the philosophical red state-blue
24 state and --

25 COMMISSIONER BRACERAS: That's fine, but I just

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1 want to be clear on the record that membership in the
2 Federalist Society tells you nothing about somebody's
3 (a) political affiliation or (b) ideological views,
4 other than the fact that they generally believe in the
5 principles of limited government and judicial
6 restraint. Other than that it tells you nothing.

7 COMMISSIONER YAKI: Well, let me just tell you
8 something, that the views of limited government and
9 judicial restraint and the number of federalists whom
10 I've encountered in my lifetime lead me to believe
11 that I pretty much know where they're going to land on
12 most issues. So, yes, you -- and -- and -- and I can
13 say the same thing about --

14 COMMISSIONER BRACERAS: -- are members of the
15 Federalist Society.

16 COMMISSIONER YAKI: -- anyone in the ACLU. I
17 can say that about people in the American Bar
18 Association. We can sit here all we want and say
19 that, but the fact is people associate with different
20 groups for various reasons. They wish to do so
21 because the association is in itself part of who and
22 what they are.

23 So, yes. I mean, fine. You know, pile in all
24 of the federalists and Cato and everyone else and AEI
25 and whoever.

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1 CHAIRMAN REYNOLDS: We will now have diversity.

2 COMMISSIONER YAKI: But, you know, at the end of
3 the day when you have folks whose entire point of view
4 is to oppose civil rights or civil liberties, then I
5 have an issue.

6 And, you know, rather than go into --

7 COMMISSIONER BRACERAS: And what evidence do you
8 have that any of these people oppose civil rights and
9 civil liberties?

10 COMMISSIONER YAKI: Well, I've already given you
11 one about one in Connecticut, and I'm sure if I did a
12 lot of extra research, which I don't have the time to
13 do nor an assistant to do, on some of the new
14 nominees, I could come up with writings. But I can
15 tell you for sure that when it comes to California,
16 I've got a lot of stuff on a lot of the people there,
17 and I will bring it up, each and every one.

18 COMMISSIONER BRACERAS: And that's fine, but I
19 just --

20 CHAIRMAN REYNOLDS: -- you will come loaded for
21 bear for that discussion, I am sure.

22 COMMISSIONER BRACERAS: I just want to say that,
23 you know --

24 COMMISSIONER YAKI: I can't sit here and want
25 to, nor would I be, you know, for all of these

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1 different states. I agree with Commissioner Melendez.

2 I think there is a process issue. I think that the
3 issue of --

4 COMMISSIONER BRACERAS: We have a process. You
5 just don't like it.

6 COMMISSIONER YAKI: Yeah, pretty much.

7 COMMISSIONER BRACERAS: But don't say, you know,
8 you're wondering what the process is and is there a
9 process and there doesn't seem to be a process.

10 COMMISSIONER YAKI: No, no, no, no.

11 COMMISSIONER BRACERAS: There's a process. We
12 voted for it.

13 COMMISSIONER YAKI: No, that's not true. The
14 process by which the actual members are --

15 COMMISSIONER BRACERAS: There are criteria.

16 COMMISSIONER YAKI: No, there are criteria for
17 the individual members. The process by which the pool
18 is created is what Commissioner Melendez has raised,
19 which I agree with and where I believe the Commission
20 can and should do better. You know, I'm sorry, but
21 the idea that -- I'm going to come straight back to it
22 -- the idea that we're rolling through a bunch of SACs
23 today where the ratio of men to women is three to one
24 just doesn't scour for me.

25 COMMISSIONER BRACERAS: What's the ratio on this

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1 Commission?

2 CHAIRMAN REYNOLDS: I under --

3 COMMISSIONER BRACERAS: Do you want to resign
4 your seat and let someone else step in?

5 COMMISSIONER YAKI: No, because I'm the only
6 Asian.

7 CHAIRMAN REYNOLDS: Commissioner Yaki --

8 COMMISSIONER YAKI: I'm not going to give that
9 up.

10 COMMISSIONER BRACERAS: Well, but these people
11 bring other things to the table, too, just as you
12 bring your ethnicity to the table. These other people
13 may not bring the right sex to the table, but they
14 bring other things. That's the very point.

15 CHAIRMAN REYNOLDS: The bottom line is --

16 COMMISSIONER YAKI: Let me just say this. If I
17 had the appointment power, it would be a lot
18 different.

19 CHAIRMAN REYNOLDS: -- that after our process,
20 in my view it is going to result in SACs that have a
21 greater amount of diversity in terms of viewpoint.
22 Just doing a before and after picture, what did the
23 world look like before these SACs were reconstituted
24 and now?

25 And I think that it is clear that these SACs

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1 will have viewpoints that you may not like, but are
2 shared by many Americans, and so we will be able to
3 engage in fully fleshed out debates, and I think
4 that's a good thing.

5 COMMISSIONER KIRSANOW: Mr. Chair, I just want
6 an answer to my question. During the course of the
7 selection of SAC members, was anyone rejected or, in
8 contrast, was anyone placed onto the SAC on the basis
9 of race, sex, national origin, color, disability or
10 other --

11 CHAIRMAN REYNOLDS: I want to know, too.

12 MR. MARCUS: Certainly, to the best of my
13 knowledge, no. I have to say there is one candidate
14 who is on this who I recommended who I thought was an
15 African American and later found out -- and I don't
16 recall exactly why I had that impression.

17 COMMISSIONER KIRSANOW: Is that the guy from
18 Seinfeld?

19 MR. MARCUS: Pardon?

20 COMMISSIONER KIRSANOW: Is that the guy from
21 Seinfeld?

22 COMMISSIONER TAYLOR: There are no African
23 Americans on Seinfeld.

24 COMMISSIONER KIRSANOW: I mean the guy who
25 Elaine was dating that she felt was African American

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1 and then he thought she was Hispanic and --

2 COMMISSIONER BRACERAS: Oh, he thought Elaine
3 was Hispanic?

4 COMMISSIONER KIRSANOW: Yes.

5 CHAIRMAN REYNOLDS: The conversation is
6 degenerating.

7 COMMISSIONER KIRSANOW: It is, but you know.

8 MR. MARCUS: He later found out he was white --

9 CHAIRMAN REYNOLDS: Are you aware --

10 MR. MARCUS: -- but, of course, couldn't make a
11 changed my mind based on that. So to the best of my
12 knowledge, no one was either excluded or included on
13 any of those bases.

14 We did reach out to a number of organizations
15 that have particular connections to either gender or
16 race or different sorts of constituencies. We
17 reached out, for instance, to the League of Women
18 Voters and La Raza, the Southern Christian Leadership
19 Conference, the NAACP, the Martin Luther King Center,
20 the Jimmy Carter Center, the African Literacy Program
21 and, yes, the Federalist Society and the Georgia
22 Public Policy Institute as well as several colleges.

23 PARTICIPANT: So you had outreach. There was no
24 discrimination on the basis of any of the immutable
25 characteristics that I mentioned, and this is what we

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1 came up with.

2 MR. MARCUS: that's right.

3 COMMISSIONER MELENDEZ: I just had a comment in
4 maybe closing the comments, but I think that maybe our
5 outreach needs to be enhanced to some -- you know, I
6 think when I look at it, I had even the Native
7 Americans asking me how do you get on Civil Rights,
8 even the State Advisory committee, and I really didn't
9 have an answer for that because I was kind of worrying
10 about the process.

11 CHAIRMAN REYNOLDS: Just give me the names.

12 COMMISSIONER BRACERAS: Submit the names.

13 COMMISSIONER MELENDEZ: Yeah, but see, I think
14 the outreach needs to be if that's part of our
15 strategic goals, is to outreach to enhancing State
16 Advisory Boards. I think that maybe more work has to
17 be done there.

18 CHAIRMAN REYNOLDS: Well, looking at the
19 organizations that he just rattled off, it appears as
20 if it was a wide net that was cast and we can always
21 do a better job. So when we start our process, if any
22 Commissioner had an organization that they want to
23 insure is considered or reached to, by all means,
24 contact the Staff Director.

25 COMMISSIONER YAKI: Mr. Chair, what I would

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1 request of the Staff Director is that I would like a
2 list of those SACs for which there is currently
3 undergoing outreach for new members, and I would also
4 like the cutoff dates by which those applications
5 should be applied, and if there are any currently in
6 the process of being reviewed that is not too
7 untimely, I'd like the opportunity to see whether or
8 not names could be suggested for them.

9 But part of the issue, quite frankly, is not
10 just her, give me a name, throw me a name, whatever a
11 name is. Let me just reiterate. We are part time. I
12 have no assistant. We all have our own work to do.
13 It would help focus efforts a lot better if I knew
14 that in two months Washington or -- no, we did
15 Tennessee -- you know, or whatever is coming up down
16 the pipeline. These are the deadlines, blah, blah,
17 blah. That would help focus attention on that better
18 than sort of a scattered shot. Well, who do I know
19 and whatever, whatever, whatever?

20 MR. MARCUS: Well, may I suggest this,
21 Commissioner Yaki? There are a number where it's
22 imminent, where it's sort of too close because we've
23 already been working very --

24 COMMISSIONER YAKI: Who are they?

25 MR. MARCUS: But for -- who are they?

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1 COMMISSIONER YAKI: Yes.

2 MR. MARCUS: The ones that were really close, of
3 course, California is on the table.

4 COMMISSIONER YAKI: I don't think you're close
5 at all on that one.

6 MR. MARCUS: I think we're very close with
7 Virginia, with Maryland, with Arizona. I hope we're
8 close with Wyoming. Those are the ones we're very
9 close.

10 And when I say "very close," once we have a
11 name, it can take many months in order to get the
12 paper work done. So those ones are very close, but
13 the ones that we're not quite that close where it
14 would be great to get additional names would be ones
15 like --

16 COMMISSIONER YAKI: Well, rather than say it, I
17 think an E-mail would be great to go out with the
18 deadlines because that would make it a lot easier.

19 CHAIRMAN REYNOLDS: Yeah, and we wouldn't have
20 to --

21 MR. MARCUS: That's fine.

22 CHAIRMAN REYNOLDS: Yeah, I think that that's a
23 good idea.

24 Are we ready to vote on the Georgia SAC? All in
25 favor of the motion, please say aye.

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1 (Chorus of ayes.)

2 CHAIRMAN REYNOLDS: Objections? Abstentions?

3 COMMISSIONER YAKI: Oh, objections? You mean no
4 votes? No.

5 COMMISSIONER MELENDEZ: I abstain.

6 COMMISSIONER YAKI: I'm voting no.

7 CHAIRMAN REYNOLDS: Okay. So let the record
8 reflect that --

9 COMMISSIONER TAYLOR: He obtained.

10 CHAIRMAN REYNOLDS: Oh, you or --

11 COMMISSIONER TAYLOR: He obtained.

12 CHAIRMAN REYNOLDS: Yes. Please let the record
13 reflect that Commissioner Melendez abstained.
14 Commissioner Yaki votes against the Georgia slate.
15 The motion carries.

16 Next up is the recharter package for the
17 Illinois SAC. May I have a motion to recharter the
18 Illinois State Advisory Committee?

19 Under this motion the committee appoints the
20 follow individuals to that committee based on the
21 recommendations of the Staff Director:

22 Barbara Abrajano

23 Nancy Adrade

24 David Baker

25 Martin Castro

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1 Sonny Chico

2 Yvonne Coleman

3 Louis Goldstein

4 Sandra Jackson

5 This is a challenge. Ultra Mandrite (phonetic)

6 Demetri Kantzavelos

7 Herbert Morton

8 John Mauck

9 Cameron Memon

10 Gordon Quinn

11 Cynthia Shawamreh

12 Betsy Shuman-Moore

13 Anthony Sisneros

14 Lee Walker

15 And Farhan Younus

16 With this motion, the Commission appoints Lee
17 Walker as the chair of the newly rechartered Illinois
18 State Advisory Committee. These members will serve as
19 uncompensated government employees, and the Commission
20 appreciates the hard work that they will no doubt
21 contribute assuming that this motion passes.

22 Under this motion, the Commission authorizes the
23 Staff Director to execute the appropriate paper work
24 for the appointment.

25 Anyone in support of this motion?

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1 COMMISSIONER MELENDEZ: I have a question. Do
2 you need a second before we discuss?

3 PARTICIPANT: So moved.

4 CHAIRMAN REYNOLDS: I would prefer -- and is
5 there a second?

6 COMMISSIONER TAYLOR: Second.

7 CHAIRMAN REYNOLDS: Thank you.

8 COMMISSIONER MELENDEZ: Yes, again, along the
9 same lines of what we're talking about, I believe that
10 the regional staff person had recommended Mr. Castro,
11 you know, within that region, and I believe Mr. Marcus
12 had basically decided on Mr. Walker, who is a
13 Republican. So I'm just saying the whole issue just
14 seems to be along party lines as far as stacking some
15 of these, and that's a good example of where from the
16 bottom up you will get a recommendation. Unless you
17 have a valid reason why --

18 CHAIRMAN REYNOLDS: How as it stacked?

19 COMMISSIONER MELENDEZ: I mean, I'm just saying
20 --

21 CHAIRMAN REYNOLDS: What's the ratio of --

22 COMMISSIONER BRACERAS: The chairman has to be
23 from one part or the other. So is it stacked either
24 way?

25 COMMISSIONER MELENDEZ: But I'm just saying,

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1 well, give us a good reason why the recommendation
2 coming from the region -- you would think that unless
3 you know him better than the regional person who is in
4 that area --

5 CHAIRMAN REYNOLDS: Well, I do. He's my pick.
6 I know Lee Walker for quite a long time. He's been
7 involved in the civil rights movement for a long time.
8 He marched with Abernathy and company. He runs a
9 coalition out of Chicago. He's a big supporter of
10 school choice.

11 I think that he would be a fantastic chairman,
12 and that's why I recommended him.

13 COMMISSIONER MELENDEZ: So what --

14 CHAIRMAN REYNOLDS: The imbalanced chair --

15 COMMISSIONER MELENDEZ: So what would be wrong
16 with Mr. Castro then? Do you have to basically come
17 up with why wouldn't you go with the recommendation of
18 their regional director in that area?

19 MR. MARCUS: May I address that?

20 COMMISSIONER MELENDEZ: Sure.

21 MR. MARCUS: I got the packet from the regional
22 director which had various recommendations, including
23 Mr. Castro for chair. I looked at all of the
24 different recommendations, and considering each
25 potential person for chair as well as Mr. Castro.

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1 Given that Mr. Castro was the recommendation of the
2 director, he was sort of the first person I looked at,
3 but I also wanted to look at others.

4 I asked the regional director for the reasons
5 why he rather than anyone else, and one of the leading
6 recommendations was that it was because it was a
7 Commissioner recommendation. Because Commissioner
8 Braceras had mentioned him, that sort of gave him an
9 advantage, and there were one or two other things that
10 she mentioned also.

11 Walker was someone who I knew also had
12 Commissioner recommendation, although that
13 Commissioner recommendation might not have been known
14 to the regional director.

15 I called both of them. I called both Castro and
16 Walker, and I had several days before the mail-out to
17 get a response and to talk to both of them. Walker I
18 was able to talk to and had a very good conversation.

19 I knew a little bit of his background. I had the
20 recommendation from the Chair and from my discussion
21 of him and what I had seen from others and talking to
22 the regional director, he seemed to have the level of
23 commitment and energy to be a very good chair.

24 Mr. Castro did not return my phone call during
25 that period. Now, I later heard that he was on

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1 travel, and he more recently returned my call, and so
2 now we're playing phone tag, but the main reason that
3 I wasn't able to go with him was that I wasn't able to
4 communicate with him.

5 One thing I find with State Advisory Committees
6 is that the members are often difficult to contact,
7 just as Commissioners are, because they have other
8 jobs, and so I try to be persistent in trying to reach
9 people.

10 On the other hand, all else being equal, the
11 ability to reach someone who is supposed to be the
12 eyes and ears in the Commission certainly weighs in
13 favor of them. So that together with the different,
14 very positive things that I had been hearing from Mr.
15 Walker sort of weighed in favor of Mr. Walker.

16 But I would want to emphasize that I've heard
17 only good things about Mr. Castro as well, and hope
18 that he continues to serve as a valued member of the
19 committee.

20 COMMISSIONER BRACERAS: I mean, with all due
21 respect, Marti Castro is fabulous, and he was my
22 recommendation for the SAC, and had he been selected
23 as chair, I'd be thrilled with that. But I'm willing
24 to defer to the Staff Director's discretion, and if
25 both of these individuals are good people for the

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1 post, then as between the two, the Staff Director's
2 decision that accessibility -- I'm sorry?

3 COMMISSIONER YAKI: Nothing.

4 CHAIRMAN REYNOLDS: Just a shot.

5 COMMISSIONER BRACERAS: What did he say?

6 CHAIRMAN REYNOLDS: Oh, no, nothing. Just he's
7 a Republican.

8 COMMISSIONER YAKI: No, I said, "Pick the
9 Republican."

10 CHAIRMAN REYNOLDS: "Pick the Republican."

11 COMMISSIONER BRACERAS: The bottom line is I
12 would have been happy either way, and I'm willing to
13 leave that decision to the Staff Director. I would
14 have been thrilled to see Marti Castro as chair, but
15 I'm not going to oppose it just because --

16 COMMISSIONER MELENDEZ: Right, and I don't have
17 a problem with the authority of the Staff Director
18 being the final say, you know what I mean? But what
19 I'm saying is as you know, when we first started
20 discussing the SACs and I also recommended that we
21 kind of include that in the strategic plan, and you
22 also know what was said about us, and it almost sounds
23 like they were saying that they're kind of left out,
24 that their decisions don't mean anything, and it
25 probably goes to the regional officers, too.

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1 I'm just saying that at some point we might want
2 to, wherever they make the recommendation, we might
3 want to support that recommendation. Otherwise if we
4 keep overriding that recommendation, then we'll
5 probably get more letters from people saying that this
6 is a top-down, do as we say, and we don't care about
7 what the SACs say or what the regional directors say.

8 That's my only point, and you know, even though
9 we brought these up as certain issues, I just want us
10 to be aware of that whole bigger picture as we move
11 forward.

12 CHAIRMAN REYNOLDS: Well, I think it is
13 important that we entertain seriously the suggestions
14 by all the folks involved in the process, but if
15 you're suggesting that these decisions be made by
16 either the current or former members of SACs or the
17 folks in regional offices, then I'd have to disagree
18 with you.

19 I think that the ultimate decision is ours and
20 that we rely heavily on the judgment of the Staff
21 Director, and I think that that process does not
22 eliminate input from current and former members of
23 SACs or the regional offices.

24 Commissioner Yaki.

25 COMMISSIONER YAKI: Yes. Using a value neutral

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1 approach to this, given the fact that this is a very
2 active state with the presuming hopefully will be a
3 very active SAC, I think that having some continuity
4 in leadership would be important, and I am going to
5 make a substitute motion to nominate Mr. Castro as the
6 Chair of the Illinois SAC.

7 COMMISSIONER MELENDEZ: I would second that
8 motion.

9 COMMISSIONER BRACERAS: Do we know that he's
10 interested?

11 COMMISSIONER YAKI: Presumably he is --

12 MR. MARCUS: I believe he is. I believe that he
13 would not -- I believe that he is interested.

14 COMMISSIONER YAKI: Presumably he would not have
15 been submitted by others if he had not given an
16 indication that he would have.

17 CHAIRMAN REYNOLDS: Okay. Conversation.

18 Mr. Castro, is he currently on the SAC?

19 COMMISSIONER BRACERAS: Un-huh.

20 COMMISSIONER YAKI: Yes, he is.

21 CHAIRMAN REYNOLDS: Okay.

22 COMMISSIONER BRACERAS: I mean, I'm indifferent,
23 honestly, except that I don't necessarily feel that we
24 should be disrupting, you know, the discretion of the
25 Staff Director, but --

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1 CHAIRMAN REYNOLDS: Well --

2 COMMISSIONER BRACERAS: -- I'm a big fan of
3 Marti Castro. I gave \$400 to his congressional
4 campaign. You're not going to see a fight from me if
5 he becomes the chair.

6 CHAIRMAN REYNOLDS: I would say that we just
7 vote on the motion as the original motion. I see no
8 reason to undo the choice made by the Staff Director.

9 There will be many instances where there are multiple
10 strong candidates and a decision is made. Unless we
11 can find some type of flaw in the Staff Director's
12 process or some type of animus, then I think that we
13 should just -- at least I would recommend that we
14 defer.

15 COMMISSIONER YAKI: Point of order.

16 COMMISSIONER KIRSANOW: I think the process is
17 that we vote on a substitute motion.

18 COMMISSIONER YAKI: Right. Point of order. The
19 substitute motion takes precedence over the main
20 motion.

21 CHAIRMAN REYNOLDS: Okay.

22 COMMISSIONER MELENDEZ: I was going to address
23 the substitute motion.

24 COMMISSIONER YAKI: Is there a second?

25 PARTICIPANT: Second.

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1 COMMISSIONER MELENDEZ: And what I was saying,
2 the issue is there has to be some give and take on
3 this Commission, you know, and this might be one of
4 the give-and-takes because if for some reason -- and
5 we could lose the vote on this, but what you'll see is
6 like Commissioner Yaki said. I don't have time to get
7 involved with every one of these SACs, but if we are
8 not happy and there is no compromise or no give and
9 take on here, then what you'll see is we'll really get
10 into these SACs and every one of these we come up,
11 we'll focus off of whatever else there is, and we'll
12 start to put more effort into really scrutinizing
13 every one of these, and that's where we're actually
14 going.

15 CHAIRMAN REYNOLDS: I think that that's each
16 Commissioner's prerogative. If you'd like to spend a
17 lot of time pouring over each of the candidates, I
18 think it would probably be a good thing. The more
19 information the better.

20 And in terms of compromise, this Commission has,
21 I think, bent over backwards to try to meet, to try to
22 respond to all dissenting views. We've always tried
23 to -- all on a regular basis, we try to come up with
24 compromises.

25 What we don't do is just say, "Let's vote." We

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1 work at trying to find compromises. Most of the time
2 we're successful. Some of the time we're not. So --

3 COMMISSIONER YAKI: I would agree.

4 COMMISSIONER MELENDEZ: Let me ask what does
5 Staff Director's -- what do you think about changing
6 to Mr. Castro as far as could it go either way as far
7 as you're concerned or you still -- because it sounds
8 like it's the Chairman that's basically recommending.

9 Maybe you thought about Mr. Castor. Maybe it's the
10 Chairman that's basically pushing you to change your
11 mind and go in a different direction.

12 CHAIRMAN REYNOLDS: Push you? Did I twist your
13 arm?

14 MR. MARCUS: No. Mr. Walker is my
15 recommendation and he is my enthusiastic
16 recommendation. I've heard and read very positive
17 things about him. He really seems to be a leader in
18 his community. He's very well regarded. He's been
19 very active in a number of issues related to civil
20 rights. I think he's going to be tremendous.

21 Mr. Castro I've also only heard good things
22 about. I think either one of them would be great. I
23 think we are very fortunate that both gentlemen are
24 willing to serve and serve without compensation in the
25 relatively task less job. If I had had an opportunity

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1 to speak with Mr. Castro, if he hadn't been traveling
2 as part of his busy law practice, I really don't know.

3 I mean he might have impressed me every bit as
4 favorably as Mr. Walker, but it's hypothetical at this
5 point.

6 So I would say I enthusiastically recommend Mr.
7 Walker, but I've heard only good things about Mr.
8 Castro.

9 CHAIRMAN REYNOLDS: Commissioner Taylor.

10 COMMISSIONER TAYLOR: This is a process that I
11 think requires some level of deference to the Staff
12 Director. I would differ in the Chair in the sense
13 that I don't feel bound and limited by the need to
14 have a member of this Commission identify a flaw in
15 the Staff Director's logic in order for me not to
16 defer to him.

17 CHAIRMAN REYNOLDS: That's fair. I agree.

18 COMMISSIONER TAYLOR: Frankly, sometimes there
19 may be calls that we make where Commissioner Yaki
20 makes a recommendation, for example, or asks a
21 position, and I in the interest of maintaining the
22 collegial nature of this body agree with.

23 Having said all of that, I'm going to vote
24 against the substitute motion because of the Chair's
25 involvement with this individual and his desire to see

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1 him serve as chair. You know, absent that personal
2 involvement, I'd be more inclined, frankly, to go with
3 Commissioner Yaki's recommendation, but given the
4 Chair's personal involvement, I'm going to vote
5 against it.

6 I want to put another caution, if I could,
7 however. Commissioner Melendez indicated that he was
8 concerned that there would be an effort to stack
9 these, and I don't think that's true in any respect.
10 The process is open, and again, but for the personal
11 involvement of the Chair, I'd be inclined to support
12 Commissioner Yaki's motion, but I can't for that
13 reason.

14 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

15 COMMISSIONER KIRSANOW: I concur in large part
16 with comments made by Commissioner Taylor. I'm
17 encouraged, actually by the process as described by
18 Commissioner Braceras, the Chair, and the Staff
19 Director as to how we arrived at the recommended
20 motion pertaining to Mr. Walker.

21 We had a Republican Commissioner who had
22 recommended a Democratic chair. The Staff Director
23 vetted the two, made a diligent effort to make sure
24 that he received comments from both of them, and
25 possibly because of time constraints couldn't receive

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1 sufficient input to make a determination with respect
2 to Mr. Castro.

3 Mr. Walker doesn't seem to have any deficiencies
4 or defects that would disqualify him from this
5 process. So I think this has been a process that was
6 fair and open, transparent, and I'm also inclined to
7 vote against the substitute motion because I don't
8 defer to the Staff Director, but I think he has spent
9 a lot more time on this issue than I have, and I don't
10 know anything about Mr. Castro other than what I have
11 just heard here today and what's in the materials.

12 And clearly, the Staff Director has spent more
13 time on this than I have.

14 CHAIRMAN REYNOLDS: Two comments. When I
15 recommended Mr. Walker, I assumed that he was a
16 Democrat, and he marched with King and Abernathy, and
17 from that generation most of the black leaders were
18 Democrats. My assumption turned out to be wrong.

19 And as for Mr. Castro, he is imminently
20 qualified to be the chairman of that SAC, and in fact,
21 if he is still on the SAC and interested in the job
22 the next go-round, my presumption is he will have my
23 vote.

24 COMMISSIONER KIRSANOW: I would call the
25 question.

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1 CHAIRMAN REYNOLDS: Okay.

2 COMMISSIONER YAKI: Point of information. On
3 SACs are there chairs and vice chairs or is it just
4 chair?

5 MR. MARCUS: Typically we have chairs. Vice
6 chair is not a typical designation. I can't say we
7 don't have any in the 51, but typically we have a
8 chair.

9 COMMISSIONER YAKI: Well, what happens, for
10 example, when a chair is unable to fulfill his or her
11 duties?

12 MR. MARCUS: Well, that's a good question. The
13 process is to name an acting chair. For instance,
14 there was a motion to name an acting chair in Maine a
15 couple of months ago.

16 COMMISSIONER YAKI: Well, I would just say
17 listening to the Chairman and his strong feelings
18 about Mr. Walker, I'm inclined to withdraw my motion,
19 but I would suggest that perhaps in this instance
20 where we have two people very qualified, very
21 interested, perhaps we can in this instance create the
22 chair/vice chair category so that they can both
23 function at a high level and hopefully working with
24 each other, and I would ask that we create a chair and
25 vice chair position in the State of Illinois, with the

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1 chair being Mr. Walker and the vice chair being Mr.
2 Castro.

3 CHAIRMAN REYNOLDS: Okay. Second?

4 COMMISSIONER KIRSANOW: I'm not opposed to that.
5 I'm sorry if there's any discussion. I just don't
6 know if that's kind or presumptuous of us. You know,
7 it may be that Mr. Castro would see that as a demotion
8 or an insult. I don't know. We haven't contacted
9 him.

10 CHAIRMAN REYNOLDS: Well, we can do it
11 contingent upon a conversation with him.

12 Comments? How does everyone feel about this?

13 (No response.)

14 CHAIRMAN REYNOLDS: Okay. I'm comfortable with
15 the motion and will support it. So let's vote on the
16 -- where are we now?

17 COMMISSIONER YAKI: Amended Yaki substitute
18 motion.

19 CHAIRMAN REYNOLDS: Thank you. The amended Yaki
20 substitute motion.

21 COMMISSIONER KIRSANOW: Could we restate it?

22 COMMISSIONER YAKI: That we accept the
23 recommendation of the Staff Director for Lee Walker to
24 be named as Chair; that we direct the Staff Director
25 to ask Mr. Castro if he would be willing to serve as

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1 vice chair of the Illinois SAC and if so, to create
2 that position, and entitle them there forthwith.

3 CHAIRMAN REYNOLDS: All in favor? I'm sorry.

4 COMMISSIONER TAYLOR: Second.

5 CHAIRMAN REYNOLDS: Okay. We have a second
6 here. We've already had our discussion. We get to
7 vote now. All in favor, please say aye.

8 (Chorus of ayes.)

9 CHAIRMAN REYNOLDS: Any dissent, objections,
10 abstentions?

11 (No response.)

12 CHAIRMAN REYNOLDS: Okay. That motion passes.

13 However, it was not clear --

14 PARTICIPANT: We still have the slate portion.

15 CHAIRMAN REYNOLDS: Yes, that's right. It's
16 finished with the slate. Okay. Now, let's vote on
17 the remaining recommendations. Do we need additional
18 discussion?

19 (No response.)

20 CHAIRMAN REYNOLDS: Okay. All in favor?

21 (Chorus of ayes.)

22 CHAIRMAN REYNOLDS: Objections?

23 COMMISSIONER MELENDEZ: Abstain.

24 CHAIRMAN REYNOLDS: Okay. Please let the record
25 reflect that with the exception of Commissioner

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1 Melendez, all Commissioners present voted for the
2 motion. The motion carries.

3 We'll take a five-minute break.

4 COMMISSIONER MELENDEZ: Actually I'm sorry. I
5 wanted to abstain on the remainder.

6 CHAIRMAN REYNOLDS: Oh, okay. Please let the
7 record reflect that with the exception of
8 Commissioners Yaki and Melendez, all of the other
9 Commissioners voted in favor. The motion carries.

10 Let's take a five-minute break.

11 (Whereupon, the foregoing matter went off the record
12 at 11:09 a.m. and went back on the record
13 at 11:26 a.m.)

14 CHAIRMAN REYNOLDS: Let's go back on the record.

15 We have the rechartering package for Utah.
16 Commissioners Yaki and Melendez, if there are an
17 insufficient number of blacks on that committee, it's
18 not our fault.

19 May I have a motion that the Commission
20 recharter the Utah State Advisory Committee?

21 Under this motion the Commission appoints the
22 following individuals to that committee based on the
23 recommendations of the Staff Director:

24 Charlene Arbon

25 Glen Bailey

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1 William Coleman
2 Virginius Dabney
3 Marco Diaz
4 Michael Homer
5 Robyn Kaelin
6 Daniel Levin
7 Edward Lewis
8 Joan Milner
9 Rosa Maria Martinez
10 David Parker
11 Betty Sawyer
12 Filia Uipi
13 Robert Whitehorse
14 And Jennifer Yim.

15 With this motion, the Commission appoints
16 Mr. Uipi as chair of the newly rechartered Utah State
17 Advisory Commission. These members will serve as
18 uncompensated government employees, and the Commission
19 appreciates your hard work, assuming that this motion
20 passes, that they will contribute.

21 Under the motion the Commission authorizes the
22 Staff Director to execute the appropriate paper work
23 for the appointment.

24 Does anybody want to hand me this motion?

25 COMMISSIONER TAYLOR: So moved.

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1 CHAIRMAN REYNOLDS: Thank you.

2 COMMISSIONER KIRSANOW: Second.

3 COMMISSIONER YAKI: I'm just going to say the
4 same objections as before.

5 COMMISSIONER MELENDEZ: I would ask the Staff
6 Director how this dialogue went with the regional
7 director.

8 CHAIRMAN REYNOLDS: I had no input into this
9 one. I don't know many people from Utah.

10 MR. MARCUS: I'm sorry, Commissioner. How did
11 my conversation --

12 COMMISSIONER MELENDEZ: How did that one go as
13 compared to the others as far as the Utah?

14 MR. MARCUS: In this one, we reached out to a
15 number of organizations, including the Utah Governor's
16 Office, the State Foreign Commission's Office, the
17 University of Utah, at least one or two members of
18 Congress, the NAACP, the Asian Association of Utah,
19 the Utah Rasa Political Action Committee. We reached
20 out to a number of different groups and have what I
21 think is a fairly diverse, balanced group in a number
22 of respects.

23 The regional director's recommendations looked
24 pretty good to me. I made a number of efforts to
25 reach out and identify candidates to see whether I was

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1 coming up with the same one as the regional directors
2 were coming up with different ones.

3 In the State of Utah, I frankly did not come up
4 with very much, certainly different than the regional
5 directors, and I know he was working on it very hard.

6 Fortunately we were able, since this was at the end
7 of the fiscal year and we had a little extra money, I
8 was able to send the regional director to Salt Lake
9 City to do some recruitment.

10 I think at that point we were a little weak on -
11 -

12 COMMISSIONER YAKI: You sent him on a mission?

13 MR. MARCUS: -- we were a little weak on
14 lawyers. So he was able to recruit lawyers, and the
15 package basically seemed to be balanced.

16 I looked at all of the candidates, and
17 especially Mr. Uipi. I interviewed Mr. Uipi by phone,
18 had a very good conversation with him. He certainly
19 seemed to be committed to the mission of the SAC.
20 Everything that I heard from him seemed to be very
21 positive, and so I was able to make the
22 recommendations essentially based on what the regional
23 director had suggested.

24 CHAIRMAN REYNOLDS: Additional conversation?

25 (No response.)

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1 CHAIRMAN REYNOLDS: Okay. All in favor, please
2 say aye.

3 (Chorus of ayes.)

4 CHAIRMAN REYNOLDS: Objections? Abstentions?

5 (Show of hands.)

6 CHAIRMAN REYNOLDS: Let the record reflect that
7 Commissioner Yaki abstains. The remaining
8 Commissioners voted in favor of the motion. The
9 motion passes.

10 Okay, folks. We are done.

11 COMMISSIONER KIRSANOW: One thing. I just
12 wanted to acknowledge my former assistant, Chris
13 Jennings, who left the employ of the Commission about
14 a month ago to take a position in Baghdad. The
15 Commission was a bit too stressful for him. He had
16 done tremendous work on my behalf in nearly three
17 years, and he was an extraordinary assistant, assisted
18 me in preparation for testimony and nomination of a
19 couple of Supreme Court Justices before the Senate
20 Judiciary Committees, done Yeoman's work, and I shall
21 miss him.

22 COMMISSIONER YAKI: What's he doing in Baghdad?

23 COMMISSIONER KIRSANOW: He's assisting with the
24 continued formation of the government.

25 COMMISSIONER BRACERAS: Who was he employed by?

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1 COMMISSIONER KIRSANOW: I can't remember what
2 the name of the entity is.

3 COMMISSIONER BRACERAS: Is he already there?

4 COMMISSIONER KIRSANOW: Yes.

5 CHAIRMAN REYNOLDS: Okay. Well, folks, we will
6 reconvene at one o'clock. Please try to get here on
7 time.

8 The briefing, as you know, will be covered by C-
9 SPAN, and it would be great if we could start on time.

10 (Whereupon, at 11:31 a.m., the meeting was
11 recessed for lunch, to reconvene at 1:00 p.m., the
12 same day.)

13 **VI. Briefing on Voter Fraud and Voter Intimidation**

14 CHAIRMAN REYNOLDS: Okay, folks. Let's get
15 started.

16 I guess I start off by welcoming our panelists.

17 I would ask everyone to silence their cell phones.

18 On behalf of the Commission on Civil Rights, I
19 welcome everyone to this briefing on voter fraud and
20 voter intimidation. The Commission frequently
21 arranges such public briefings with presentations from
22 experts outside of the agency in order to inform
23 itself and the nation of civil rights issues.

24 At this briefing a panel of experts will advise
25 the U.S. Commission on Civil Rights on the frequent

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1 allegations of voter fraud and intimidations that have
2 questioned federal and state elections in recent
3 years. Purported incidents of voter fraud include
4 non-citizens voting, eligible voters casting two or
5 more ballots or impersonating other voters and other
6 types of fraud.

7 Claims of voter intimidations have involved
8 officials purportedly challenging voters in minority
9 areas with requests for identification and providing
10 incorrect information on voter eligibility.

11 This morning we are pleased to welcome four
12 experts on various aspects of voter fraud and voter
13 intimidation.

14 First, we have Robert Pastor, currently a
15 professor of international relations at American
16 University and former Executive Director of the
17 Carter-Baker Commission, more formally known as the
18 Commission on Federal Election Reform.

19 Second to speak will be Thor Hearne, a member
20 and principal of the law firm of Lathrop & Gage in St.
21 Louis, Missouri. He was the national election counsel
22 for the Bush-Chaney ticket in '04, and general counsel
23 to the American Center for Voting Rights.

24 Third will be Donna Brazile, Chair of the
25 Democratic National Committee's Voting Rights

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1 Institute and former campaign manager for the Gore-
2 Lieberman ticket in 2000.

3 Finally we'll have John Fund of the Wall Street
4 Journal and author of a 2004 book Stealing Elections:
5 How Voter Fraud Threatens our Democracy.

6 I welcome all of you on behalf of the
7 Commission, and we'll introduce everyone and describe
8 your activities, and then we'll call on you according
9 to the order which I have given for the record.

10 First up we will have Robert Pastor, who has
11 been the Vice President of International Affairs and a
12 professor of international relations at American
13 University since 2002. In addition, Dr. Pastor is the
14 Executive Director of the Commission on Federal
15 Election Reform, co-chaired by Jimmy Carter and James
16 Baker.

17 From 1985 until he arrived in American
18 University, Dr. Pastor was the professor of political
19 science at Emory University and a fellow and founding
20 director of the Carter Center's Latin American and
21 Caribbean Program and the Democracy and China Election
22 Projects.

23 He has held many other prestigious positions in
24 government and academia. He was a Peace Corps
25 volunteer in Malaysia, a Fulbright Scholar in Mexico,

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1 a Straus Visiting Professor at Harvard University, and
2 the creator of the Humphrey Fellows Program.

3 Dr. Pastor is author or editor of 16 books,
4 including Toward a North American Community, Exiting
5 the Whirlpool, U.S. Foreign Policy Towards Latin
6 America, and others.

7 Second we have Thor Hearne. Thor currently
8 serves as counsel to the American Center for Voting
9 Rights Legislative Fund. Prior to joining the
10 legislative fund, he served as the national election
11 chief counsel to President Bush's reelection campaign
12 for 2004 and in 2000, he was the Missouri counsel to
13 the Bush campaign.

14 Hearne was served as legal counsel in too many
15 other political candidates and campaigns on the
16 federal and state level. Mr. Hearne testified before
17 the U.S. House Administration Committee hearing in
18 March 2005 regarding the presidential election in
19 Ohio.

20 Mr. Hearne also testified before the Missouri
21 Commission to investigate the 2000 Missouri general
22 election and allegations of fraud in the city of St.
23 Louis.

24 More recently, Mr. Hearne served as an academic
25 advisor to the bipartisan Carter-Baker Commission on

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1 Election Reform. Mr. Hearne also served as the
2 attorney and law clerk in the U.S. Department of
3 Education for the Office for Civil Rights during the
4 Reagan Administration.

5 He received his law degree from Washington
6 University Law School and his B.A. from Washington
7 University in St. Louis.

8 Third we'll have Donna Brazile, who is the Chair
9 of the Democratic National Committee's Voting Rights
10 Institute, and an adjunct professor at Georgetown
11 University in Washington, D.C.

12 Ms. Brazile is the former campaign manager for
13 the presidential election for the Gore-Lieberman
14 ticket in 2000 and the first black American to lead a
15 major presidential campaign.

16 Prior to joining the Gore campaign, Ms. Brazile
17 was Chief of Staff and press secretary to
18 Congresswoman Eleanor Holmes Norton of the District of
19 Columbia. She is a weekly contributor and political
20 commentator on CNN's Inside Politics and American
21 Morning.

22 In addition she is a columnist for Roll Call
23 Newspaper and appears regularly on MSNBC's Hard Ball
24 and Fox's Hannity & Colmes. A veteran of numerous
25 national and statewide campaigns, Ms. Brazile worked

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1 on several presidential campaigns for Democratic
2 candidates

3 In addition, Ms. Brazile has served as a senior
4 lecturer and adjunct professor at the University of
5 Maryland and a Fellow at Harvard's Institute of
6 Politics. Ms. Brazile is a recipient of numerous
7 awards and honors, including Washingtonian magazine's
8 100 Most Powerful Women in Washington, D.C., Essence
9 magazine's 50 Most Powerful Women in America, and the
10 Congressional Black Caucus Foundation's award for
11 political achievement.

12 She is currently the founder and managing
13 director of Brazile & Associates, a political
14 consulting and grassroots advocacy firm based in the
15 District of Columbia.

16 Finally, we have John Fund, who writes the
17 weekly "On the Trail" column for Opinion.com, for the
18 Journal, and he is author of the 2004 book Stealing
19 Elections: How Voter Fraud Threatens our Democracy.

20 Mr. Fund joined the Wall Street Journal in April
21 of 1984 as Deputy Editorial Features Editor. He
22 became an editorial page write specializing in
23 politics and government. In October of 1986 and was a
24 member of the Journal's editorial board from 1995 to
25 2001. Mr. Fund worked as a research analyst for the

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1 California State Legislature in Sacramento before
2 beginning his journalism career in 1982 as a reporter
3 for the syndicated columnist Roland Evans and Robert
4 Novak.

5 In 1983, he received the Warren Brooks Award for
6 Journalistic Excellence from the American Legislative
7 Exchange Council. He and former Pennsylvania
8 Representative James Kohn are co-authors of the book
9 Cleaning House: America's Campaign for Term Limits.

10 Mr. Fund attended California State University
11 where he studied journalism and economics.

12 Panelists, thank you very much for carving out
13 this time from your busy schedules. We will start
14 with Professor Pastor.

15 You'll have ten minutes.

16 DR. PASTOR: Thank you very much, Mr. Chairman
17 and members of the Commission. It's an honor to
18 testify before you today on these very important
19 issues of fraud and election and intimidation in the
20 context of broader election reform.

21 For the last 20 years I've worked on improving
22 the electoral process in the United States and
23 throughout the world. At American University we
24 sponsored the Carter-Baker Commission on Federal
25 Election Reform, issued a report with 87 specific

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1 recommendations as to what is needed to improve our
2 process.

3 The subject of your hearing today demonstrates
4 why it is both necessary and difficult to make
5 progress on these reforms. For many Republicans, the
6 principal problem is electoral fraud, and for many
7 Democrats, the issue is voter intimidation and the
8 impediments to voting.

9 For many Republicans, the solution is voter IDs,
10 and for many Democrats, voter IDs are the problem, not
11 the solution.

12 For our commission, which was roughly divided
13 between Republicans, Democrats and independents, we
14 all believe that a free election requires both valid
15 integrity and access, and that voter IDs are a part of
16 the problem -- a part of the solution, but if they
17 become the entire part of the solution, then they
18 actually become the problem.

19 The other parts to the solution include
20 expanding access through an affirmative role by the
21 states to provide free voter IDs and to expand the
22 base of registered voters to take steps to insure
23 there is no intimidation and also to examine other
24 kinds of election fraud and take steps against them.

25 Without going into the full recommendations, let

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1 me try to summarize the broad approach that the
2 Carter-Baker Commission took. Let me say having
3 observed elections all over the world, I've seen crude
4 efforts to manipulate elections and to intimidate
5 voters on a national scale. Fortunately this does not
6 occur in the United States, and one reason is that our
7 system is so decentralized that it's frankly
8 impossible to manipulate the electoral system on a
9 nationwide basis. Indeed, it's hard to persuade states
10 and counties to accept uniform requirements that
11 Congress has mandated.

12 There is some forms and some fraud and some
13 intimidation in U.S. elections, and the perception may
14 be growing, albeit from each group, that each problem
15 is getting worse. Any fraud and intimidation
16 represent egregious assaults on our democracy, and we
17 need to take steps to stop both, but we also need to
18 recognize that we face a wider range of election
19 related problems. We need to, for example, establish
20 nonpartisan, autonomous, professional election
21 administration in our states. It does not exist
22 today.

23 We need paper audits and electronic security and
24 more accurate and up-to-date and interoperable
25 registration lists. We need to undertake all of these

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1 reforms to build greater confidence in elections.

2 In our report, we identify numerous
3 recommendations, first to improve access to elections
4 through improved registration for our citizens,
5 including Americans with disabilities and those
6 working or serving abroad.

7 We need to restore voting rights to otherwise
8 eligible citizens who have been convicted of a felony.
9 We need greater voter education so that more people
10 can understand their responsibility to vote and make
11 it easier for them to do so.

12 With regard to election fraud, our Commission
13 judges that it's, frankly, difficult to measure, but
14 that it occurs. The U.S. Department of Justice has
15 launched more than 180 investigations into election
16 fraud since October 2002. These investigations have
17 resulted in charges of multiple voting, of providing
18 full information on felon status, other offenses as
19 well.

20 Some cases, of course, are never pursued because
21 the difficulty of obtaining sufficient evidence for
22 prosecution or because many people believe that this
23 is a victimless crime. In truth, election fraud
24 usually attracts public attention and comes under
25 investigation only under very close elections.

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1 We recommend steps that the Department of
2 Justice should undertake to deal with that.

3 Absentee ballots remain the largest source of
4 potential voter fraud. Our Commission recommended
5 that state and local jurisdictions should prohibit a
6 person other than voter from handling absentee
7 ballots. The practice of allowing party workers from
8 delivering absentee ballots should be eliminated.
9 States should also make sure that absentee ballots
10 received by election officials before election day are
11 kept secure until they are counted.

12 The practice of challenges may contribute to
13 ballot integrity, but it can also have the effect of
14 intimidating eligible voters. New procedures are,
15 therefore, needed to protect voters from such
16 intimidating tactics, while also offering
17 opportunities to keep the registration rolls accurate
18 and to provide observers with meaningful opportunities
19 to conduct the elections.

20 States need to provide and define clear
21 procedures for challenges which should mainly be
22 raised and resolved before the deadline for voter
23 registration.

24 In addition to the penalties set by the Voting
25 Rights Act, it should be a federal felony to engage in

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1 any act of violence, property destruction or threat
2 that is intended to deny any individual the right to
3 vote. To deter systemic efforts to deceive or
4 intimidate voters, the Commission recommended federal
5 legislation to prohibit any individual or group from
6 deliberately providing the public with incorrect
7 information about election procedures for the purpose
8 of preventing voters from going to the polls.

9 A good registration list will insure that
10 citizens are only registered in one place, but
11 election officials need to make sure that the person
12 arriving at a polling site is the same one that is
13 named on the registration list.

14 In the United States where 40 million people
15 move each year, we believe that some form of
16 identification is needed. We were concerned, however,
17 over the expanding and proliferation of voter ID
18 requirements and believe that this could be the source
19 of discrimination.

20 Therefore, we recommended a single uniform ID
21 which used the real ID card as the basis for doing
22 that, which also requires proof of citizenship or
23 lawful status. But it's also essential for the states
24 to play an affirmative role to insure that those
25 people who do not have a driver's license have access

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1 to a free photo ID, and indeed, that mobile offices at
2 a much more enhanced role by states is undertaken so
3 that we use the real ID as an opportunity to expand
4 voter registration lists and, therefore, expand voter
5 participation.

6 We believe that this is possible, but it
7 requires an affirmative role by the state.

8 To verify the identity of voters who cast
9 absentee ballots, the voter's signature on the
10 absentee ballot can be matched with a digitalized
11 version of the signature that the election
12 administration maintains.

13 CHAIRMAN REYNOLDS: Two minutes. You have two
14 minutes remaining.

15 DR. PASTOR: Thank you. I'm just about there.

16 There are also concerns that IDs might be a step
17 towards a police state, but the truth is most advanced
18 democracies have national identification cards.
19 Still, nonetheless, we recommend new institutional and
20 procedural safeguards, including ombudsmen to assure
21 people that their privacy, security and identity will
22 not be compromised by ID cards. The cards should not
23 become instruments for monitoring behavior.

24 In conclusion, fraud and intimidation of any
25 kind and magnitude is unacceptable in a free electoral

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1 process, and if the perception is growing that both
2 are getting worse, then additional safeguards are
3 absolutely essential.

4 The Carter-Baker Commission offered dozens of
5 recommendations to address the two issues, as well as
6 others that confront the full gamut of problems facing
7 the U.S. electoral process, including the need to
8 establish nonpartisan, professional, and autonomous
9 election systems in each state and oversight over the
10 source codes and verifiable paper audits for
11 electronic machines.

12 To implement these goals requires that party
13 leaders in each legislative body recognize that access
14 and integrity are two sides of the same problem, and
15 both need to be protected.

16 Thank you, sir.

17 CHAIRMAN REYNOLDS: Thank you.

18 Mr. Hearne.

19 MR. HEARNE: Thank you, Mr. Chairman.

20 It is truly an honor to be here, as Mr. Pastor
21 mentioned, Professor Pastor mentioned, and I
22 appreciate being invited.

23 I also am very grateful that this Commission is
24 looking into this at a time when our nation is on the
25 cusp of a midterm election. Our national attention is

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1 focused on elections, how we are going to conduct our
2 elections.

3 Let me note Bob Pastor mentioned the Carter-
4 Baker report. I had the honor of being one of the
5 many academic advisors that assisted in that effort,
6 and that was, I consider, a high point in the process
7 of developing bipartisan consensus on election reform.

8 Bob Pastor himself really labored heavily on
9 that project, as did many others, and I would commend
10 that in my recommendation to this Commission as being
11 a very thoughtful consensus of bipartisan
12 recommendations from various leaders, including folks
13 such as Andrew Young, Lee Hamilton, President Carter,
14 Secretary of State Baker, and many others who shared
15 and participated in that work. It is an outstanding
16 product, and it is one that I think, again, has some
17 recommendations that are of very significant value to
18 this Commission.

19 But as a Commission, the Carter-Baker Commission
20 noted, as anyone who is looking at recent polls can
21 see, we have a situation in this country where there
22 is a confidence problem in our elections. Most voters
23 do not have confidence or a significant number of
24 voters do not have confidence that their vote will be
25 fairly and accurately counted, that they will have a

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1 fair and accurate opportunity to participate in the
2 election, and that lack of confidence translates into
3 a lower participation by voters.

4 And both of those, confidence and participation,
5 are features that we think, I think should be
6 addressed and I appreciate, again, this Commission
7 doing that.

8 Let me address -- and I will not read my
9 prepared remarks since I presented those to the
10 Commission. I will spare you from that and just
11 simply hit a few high points that I noted that I
12 believe are particularly compelling, as one who has
13 been in the election area, in the election law
14 practice for some time.

15 Specifically, the most important initial step
16 (and HAVA, the Help American Vote Act, took
17 significant strides in this direction), is a current
18 and accurate voter roll. The most likely reason an
19 eligible citizen will be denied their opportunity to
20 cast a ballot is when they go into their polling
21 place, they find that their name is not on the voter
22 roll. An error in the voter roll, however it gets in
23 there, can deny or disenfranchise a legitimate voter
24 from casting a ballot.

25 Voter rolls in my home State of Missouri, right

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1 now the Department of Justice is suing our state
2 because we have voter rolls that in some cases have
3 150 percent of the voting age population listed on the
4 voter roll. Clearly it is not an accurate voter roll.

5 Just this Monday in Missouri we find the St.
6 Louis Post Dispatch front page story was the suspect
7 voter registration cards, thousands of registration
8 cards, fraudulent registration cards submitted to the
9 City of St. Louis Election Board.

10 Yesterday, or the day before, the Kansas City
11 Star ran a headline where thousands of fraudulent
12 registration forms were submitted in Kansas City. In
13 2004, we had a situation where a fellow named Chad
14 Staton was paid in crack cocaine to submit fraudulent
15 voter registration cards in Defiance County, Ohio.
16 Those registration cards included ones for Dick Tracy
17 and Mary Poppins.

18 Whether somebody does or doesn't cast a ballot
19 in the name of those fraudulent registrations, that
20 entire process undermines our public confidence. When
21 you read the paper and you see that thousands of
22 fraudulent registrations are submitted, when you see
23 that the election is administered in a way where we
24 don't know if the voter rolls are accurate, our
25 citizens are losing confidence in the process.

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1 Carter-Baker recommendations go a long way to
2 addressing that and having some very sound policies
3 that states and the federal government should adopt.
4 But, as I said, a current, accurate, single statewide
5 voter roll this year, in '06, is the first year that
6 HAVA has that requirement, and hopefully, we will go a
7 long way to doing that.

8 Making sure that state election officials
9 properly fund that so every eligible, registered,
10 legitimate voter has their name appear properly on the
11 voter role is a good thing. Taking steps to prevent
12 people from trying to "game the system" with
13 fraudulent registration forms is also a good step and
14 recommendation to prevent people from doing that.

15 Both Democrat and Republican election officials
16 testified in the aftermath of Ohio in '04 that what
17 they found was large numbers of fraudulent
18 registration forms were dumped on them right at the
19 deadline, and that had the following effect. It made
20 it more difficult for them to process those
21 registration forms accurately. It also potentially
22 prevented some of them from being added to the voter
23 role in a timely manner.

24 I think voter registration forms, as the Carter-
25 Baker Commission recommended, should be submitted

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1 within several days after they are collected, maybe
2 seven days to ten days. That means that we will have
3 less likelihood of a registered eligible voter being
4 denied the opportunity to be accurately added to the
5 voter roll. It will also allow election officials to
6 do their job more accurately.

7 Bob Pastor mentioned the issue of voter
8 identification. I understand that that's a
9 contentious issue in the country right now, but it
10 shouldn't be, and I regret that in some cases it has
11 become one. I think the Carter-Baker recommendation
12 had a sound recommendation. Let's transition into a
13 government reliably issued photo identification. We
14 use that to rent a video, to get on a plane, to cash a
15 check. It has become a ubiquitous feature of our life
16 today to have that kind of identification.

17 Every poll ranges between 80 percent and 90
18 percent of the public support that kind of confidence
19 building measure. Now, we need to be very mindful
20 that we should not impose a requirement if we do not
21 provide the means for everyone to meet that
22 requirement to vote, which means that that card which
23 specifies citizenship and identity of a voter also has
24 protections to make sure they get access to them, have
25 ready access to them, the free photo ID, and that it

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1 is without any charge to anyone seeking to obtain that
2 in order to vote.

3 What you will find is some bipartisan consensus
4 united on the need for photo identification, and in
5 the perspective that I've had, the conversations that
6 I have had with those who support that, Republican,
7 Democrat, civil rights leaders as well, is they see a
8 photo identification card as a means to increase
9 participation. In fact, there has been a study by the
10 economist John Watt that found that when you have
11 greater confidence in the election process, you have
12 greater participation.

13 And specifically, while not looking at photo ID,
14 but looking at voter identification provisions, what
15 Professor Lott found was you actually had greater
16 participation by voters when you had a new
17 identification requirement than those the
18 participation before, and that study is attached to my
19 testimony to this Commission. That is the kind of
20 common sense measure I think we need to support.

21 Again, we need to do it in a way that makes sure
22 everybody has access to that, that when we do it that
23 way, it should increase confidence.

24 There are some voters who seek to participate in
25 the election who don't, who choose not to because they

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1 fear when they go in somebody will not recognize their
2 name. Maybe they have an unusual name. Maybe it's
3 not a common name. Maybe they fear somebody doesn't
4 recognize their signature.

5 If you give these voters a card with their
6 picture on it and say you go into the polling place,
7 you present this card to the election officials, and
8 this will guarantee your right to cast a ballot, that
9 increases participation. That increases confidence,
10 and that's something that should enjoy bipartisan
11 support.

12 I also note, as in Donna's prepared remarks, she
13 said the same point, that --

14 CHAIRMAN REYNOLDS: Two minutes remain, sir.

15 MR. HEARNE: Thank you.

16 -- that increased confidence equals increased
17 participation. So I think that should be our theme
18 that we seek to embrace.

19 Finally I will just note some other specific
20 recommendations in terms of the administration. I
21 share many of the points that were mentioned by other
22 panelists in their prepared testimony, but the need to
23 have confidence in our election technology, our voting
24 machines, how the votes are tabulated, we need to have
25 provisions in place so that we don't have arbitrary

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1 decisions of election officials determining the
2 outcome.

3 Voters should believe at the end of the election
4 that they were the ones who decided the outcome; that
5 this was not decided by judges and lawyers or election
6 officials acting in an arbitrary manner. We need to
7 have clear, consistent, uniform rules for the conduct
8 of our elections throughout the process.

9 Some states have taken -- and I will note two,
10 Missouri being one with their Voter Protection Act,
11 sweeping election reform in the State of Missouri
12 modeled on Carter-Baker recommendations. A similar
13 state, Pennsylvania, signed by Governor Rendell, the
14 Pennsylvania Voter Accessibility Act. Move polling
15 places out of locations in homes where previously in
16 Philadelphia they had polling places in people's
17 basements or locations where they could not readily
18 vote. That changed under the Pennsylvania law.

19 That's the kind of broad, bipartisan election
20 reform that I would recommend to this Commission to
21 consider for their recommendations.

22 Thank you very much.

23 CHAIRMAN REYNOLDS: Thank you.

24 Ms. Brazile.

25 MS. BRAZILE: Thank you so much, Mr. Chairman.

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1 I had to put a smile on my face when Thor
2 mentioned some voter polling places in the basement.
3 Before Katrina the polling place at my home in New
4 Orleans was in our basement, and it's no longer there.

5 So I just wanted to let you know a natural disaster
6 solved that problem.

7 But, Mr. Chairman, members of this Commission,
8 I'm honored to be here. I have spent my entire adult
9 life starting at the age of nine going door to door
10 trying to encourage the participation of all citizens
11 to be engaged in the electoral process, to register,
12 to participate.

13 I started long before I turned 18, quite
14 frankly, because I was excited about the prospects
15 that one candidate in my community had promised to
16 build a playground, and here I was, a young kid that
17 enjoyed athletics and sports, and when I had the
18 opportunity to go door knocking encouraging my
19 friends, their parents and others to sign up, I felt
20 it was my civic obligation and duty to get people
21 involved.

22 We won that election, and we got our playground,
23 and at the age of 12 I became an assistant coach.
24 I've been hooked on politics ever since.

25 But clearly, in my lifetime I have seen barriers

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1 come down. I have seen new barrier come up to voter
2 participation by ordinary citizens. The barriers that
3 came down were perhaps the barriers that took the
4 longest to come down, the barriers that prevented
5 people because of their race, because of their age,
6 from voting.

7 The barriers that are still erected, sometimes
8 invisible barriers today, are the barriers for
9 ordinary citizens to even find out about how to get
10 involved, how to register, and of course, the barriers
11 now that when most voters go to the polling booth,
12 they find people there who are somehow or another paid
13 by political operatives to tell them that this is not
14 election day. Election day is another day, or if they
15 hadn't paid their parking fines or their child support
16 payment, perhaps they should turn around and come back
17 another day.

18 On election day in 2000, I was in Florida with
19 my former boss, the candidate for the Democratic
20 nominee, Al Gore, and as my practice on election day,
21 I'm often on radio stations across the country
22 encouraging people to go out and vote.

23 Now, that morning I'll never forget it as long
24 as I live. I heard citizens call into various
25 stations saying, "My polling site is not open," or, "I

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1 attempted to go to my polling station and my name has
2 been inadvertently removed. I voted in the primary
3 several months ago, but no my name is not there. What
4 should I do?"

5 And of course, later that morning I heard from
6 my own sister who resided in the State of Florida, and
7 she asked me, "How many forms of ID do I need to
8 vote?"

9 Here it is, my sister. I'm one of nine kids,
10 number seven, and she said, "Donna, I have my voter
11 registration card. I have my driver's license, and
12 yet they said my name is not there. I have to produce
13 another ID."

14 Well, my sister had to produce a third ID, which
15 was a utility bill.

16 Mr. Chairman, members of this committee, it is
17 my experience as somebody who has worked on campaigns
18 at all levels in our country that the barriers should
19 not exist. The barriers to citizen participation
20 should not be erected just for partisan gain, and what
21 I've seen over the years is barriers erected for one
22 particular candidate, one particular party to try to
23 suppress the vote, to encourage people not to turn
24 out, to threaten them and to use other forms of
25 intimidation. I understand that there's a great

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1 concern about number of perhaps ineligible citizens
2 who show up at the polls on election day, and there
3 are many of them, I'm sure, who think that for some
4 reason they were registered and just show up.

5 But we know that it's all too common in our
6 democracy that certain individuals are showing up with
7 the best of intentions to try to participate, and in
8 other cases they were told that once they filled out a
9 form and showed their ID when they registered, that
10 everything was fine and they trusted some citizen or
11 some nonpartisan organizations to submit their forms
12 on time.

13 But they did not expect in the case that we
14 learned in 2004 in Ohio; they didn't expect that once
15 they showed up that the machines would be inoperable
16 or worse, that they would have to stand in line up to
17 five hours in some cases in Kenyon College ten hours
18 in order to vote.

19 I submitted my testimony for the record.
20 Following the 2004 election, I was quite concerned. I
21 didn't want to go through another election cycle where
22 I heard the complaints from ordinary people about
23 whether or not the machines would work, whether or not
24 the poll workers would be trained, whether or not they
25 would be stopped before election day.

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1 And so we undertook a study at the Democratic
2 National Committee's Voting Rights Institute to find
3 out what exactly happened. We wanted to not just hear
4 from some of the experts or the partisans. We wanted
5 to hear from the people themselves.

6 And so in the weeks following the election, we
7 went out and tried to get from those who were actually
8 on the ground what had happened on election day. We
9 conducted a comprehensive study to determine the
10 accuracy, the validity, and the problems surrounding
11 the 2004 election. Simply, we wanted to know what
12 happened. What was the experience of voters when they
13 went to cast their ballots?

14 Ohio may have experienced the most extreme and
15 widespread problems. It can be viewed as a microcosm
16 for several battleground states. The types of
17 problems reported in Ohio were reported in other
18 states, but of course, as many of you know, in
19 battleground states we have more of those problems.
20 Thor mentioned Missouri. I can give other examples of
21 states where citizens experience confusing problems at
22 the ballot box, being removed from the polling
23 station, having them show ID when, in fact, in many
24 states that there is no requirement to show ID once
25 they have voted, however, even maintains that once you

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1 have shown your ID to vote, you didn't have to show it
2 again.

3 And yet it was disturbing to find out that many
4 African Americans had to produce ID when the law did
5 not stipulate unless they were first time voters. All
6 of this is in the report by the Democratic National
7 Committee's Voting Rights Institute, along with the
8 Lawyers Committee for Civil Rights, the House
9 Democratic Caucus, which also conducted a study on
10 some of the problems that they found in Ohio and
11 elsewhere.

12 But before we try to address the issue of voter
13 fraud, which I do believe and I condemn it every day
14 of my life, let us commit to a policy of voting as
15 civil rights for all citizens of the United States and
16 design and implement policies that further that right
17 and goal without erecting more barriers that could
18 substantially dilute the participation of Americans.

19 Today as we speak, 25 days before the election,
20 over 54 million Americans are not registered to vote.

21 The highest concentration of those not registered but
22 eligible are minorities, 40 percent of Hispanic
23 Americans, 30 percent of African Americans. We need
24 to find ways to encourage the participation of all
25 individuals to get involved in the electoral process

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1 and not set up new barriers to their registration.

2 The Brennan Center, which put out a report this
3 summer on voter suppression came up with five ways,
4 five threats that is now hampering citizens' ability,
5 and they are the restrictions to voter registration
6 drives. We saw that take place this year in Florida
7 and Ohio where Secretaries of State and statewide
8 officials put barriers to nonpartisan organizations to
9 conduct voter registration drives.

10 We also know that there are barriers as relates
11 to --

12 CHAIRMAN REYNOLDS: Two minutes.

13 MS. BRAZILE: I've got you. Two minutes.

14 There are also barriers as it relates to some
15 citizens being purged inadvertently. There were
16 studies that came out of Florida. Up to 30 percent of
17 those who were purged were, you know, primarily
18 located in Democratic precincts or it was
19 substantially more minorities.

20 We also know that proof of ID as proof of
21 citizenship when it's not required is another tactic
22 to suppress and intimidate voters, and also voting
23 machine security.

24 And I have here with me today some materials
25 from not just some of the organizations, a broad array

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1 of organizations calling for emergency paper ballots
2 since Congress failed to act on any meaningful
3 election reform, and also a statement from ACORN
4 addressing some of the allegations around voter fraud.

5 Let me say in closing, Mr. Chairman, that I do
6 requirements which are illegally administered, and
7 basically dilute voting participation for individuals
8 should not be required unless we can come up with some
9 systematic way to encourage those citizens who may not
10 have access to motor vehicle places and other
11 government issued places to have access to those
12 different requirements.

13 We should find a uniform way where there's
14 having a clean voter registration list and encourage
15 other proof of eligibility, but we should not erect
16 more barriers that would hinder people's ability.

17 And lastly, according to USA Today several days
18 ago, the Election Administration Commission, which is
19 responsible for implementing HAVA, has produced a
20 commission and produced a bipartisan report on voter
21 fraud. This report, which is caught in the newspaper,
22 is very -- did not find many instances of voter fraud,
23 has not been released publicly. I would hope that
24 this Commission would encourage the Election
25 Administration Commission to release that report to

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1 the public.

2 CHAIRMAN REYNOLDS: Thank you, Ms. Brazile.

3 Mr. Fund.

4 MR. FUND: Thank you.

5 I want to thank the Commissioners for addressing
6 this important issue because we may be only three
7 weeks away from repeating the 2000 Florida election
8 debacle, although this time not in one but in several
9 states with allegations of voter fraud, intimidation,
10 and manipulation of voting machines added to the
11 generalized chaos we saw in Florida.

12 It's time to acknowledge the U.S. still has in
13 many places a haphazard election system that is more
14 befitting an emerging nation than the world's leading
15 democracy.

16 Walter Dean Burnham has called our system the
17 world's sloppiest electoral process. How sloppy?
18 Just ask the residents of Maryland last month who saw
19 their primary election thrown into chaos after
20 electronic voting machines couldn't be activated.
21 Thousands of voters gave up and went home surrendering
22 their right to vote.

23 Now we have the prospect of both candidates for
24 governor in Maryland, the Republican Governor Bob
25 Ehrlich and the Democratic challenger, Mr. O'Malley,

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1 calling on voters to cast their ballots by absentee.
2 This shows a complete lack of confidence in our
3 election system, and this presents us with two
4 possible problems.

5 If Donna Brazile and others are legitimately
6 worried about voter intimidation, the easiest ballots
7 to intimidate voters over are absentee ballots because
8 they're cast outside of the purview and the authority
9 of election officials, and we have a long history in
10 this country of people being intimidated either by
11 their spouses, their relatives, their employers, union
12 officials, or others into casting an absentee ballot a
13 certain way. More absentee ballots equals more voter
14 intimidation.

15 In addition, absentee ballots are the most easy
16 method to commit voter fraud, again, because they're
17 cast outside the view and the authority of election
18 officials.

19 The 2000 Florida recount was more than merely a
20 national embarrassment. It left a lasting scar on the
21 American political psyche. Indeed, the level of
22 suspicion is such that many Americans are convinced
23 that politicians can't be trusted to play by the rules
24 and will either commit fraud or intimidate voters at
25 the slightest opportunity.

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1 Now, the 2000 election did result in some modest
2 reforms at the federal level, such as the Help America
3 Vote Act of 2002, but the implementation has been
4 slow. Although I will say one positive outcome of the
5 HAVA Act is that Donna Brazile's sister, if she did
6 not produce all of the ID that she thought she needed
7 to produce, would have been allowed under HAVA to
8 request a provisional ballot. That provisional ballot
9 would have been counted later after she had
10 established her eligibility.

11 So under the current system if you don't have
12 the ID, you're allowed a provisional ballot. That
13 provisional ballot will be counted if you are, indeed,
14 an eligible voter.

15 America's election problems go beyond the
16 strapped budgets of many local election offices. More
17 insidious are flawed voter rolls, voter ignorance,
18 lackadaisical law enforcement, and the shortage of
19 trained volunteers at the polls.

20 Something like 70 percent of our poll workers
21 are going to be retiring in the next year. It's an
22 old person's occupation. We need to find some way to
23 bring young people, college students, high school
24 students into the process.

25 All of this adds up to an open invitation for

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1 errors, miscount or fraud. Reform is easy to talk
2 about, but difficult to bring about. Many of the
3 suggested improvements, such as requiring voters to
4 show ID at the polls, are bitterly opposed. Others
5 such as improving the security of absentee ballots,
6 which Professor Pastor mentioned, are largely ignored.

7 And of course, the biggest growth sector of our
8 election industry has been the turning of election day
9 into election month through a new legal quagmire,
10 election by litigation. Every close race now carries
11 with it the prospect of demands for recounts,
12 lawsuits, and seating challenges in Congress. Some
13 people joke that they're waiting for the day that the
14 politicians can just cut out the middle man and settle
15 all elections in court.

16 That gallows humor may be entirely appropriate
17 given the predicament we face. The 2000 election may
18 have marked a permanent change in how an election can
19 be decided. We need to restore public confidence.

20 Ironically, Mexico and many other countries have
21 election systems that are more secure than ours. It
22 wouldn't be possible in Mexico to have a situation
23 that we have in many of our American cities where the
24 voter roles have more names on them than the U.S.
25 Census lists as the total number of residents over the

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1 age of 18.

2 Philadelphia's voter roles, for instance, have
3 jumped 24 percent in the last ten years at the same
4 time the city's population has declined by 15 percent.
5 Something is going on there, and it probably does not
6 lead us to greater accuracy at the polls.

7 In the U.S. at a time of heightened security and
8 rules that require us to show ID to travel and to
9 enter most federal buildings, only about 25 states
10 require some form of documentation in order to vote.
11 A recent Wall Street Journal-NBC News poll confirms
12 every other poll that I've seen on this subject. It
13 found that over 81 percent of those surveyed supported
14 the requirement to show photo ID. This included two-
15 thirds majorities of African Americans, two-thirds
16 majorities of Democrats, two-thirds majorities of
17 Hispanics.

18 In fact, I will make a stipulation I normally
19 don't. If you can bring me evidence of a major public
20 policy question which has the levels of support that
21 we see on photo ID, 81 percent and greater, I'll make
22 a donation to your favorite charity. There simply,
23 you don't get beyond 81 percent. You simply don't.

24 Andrew Young, who is the former U.N. Ambassador
25 and the former Mayor of Atlanta, makes a very good

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1 point about photo ID. Of course we have to make sure
2 this is accessible. Of course we have to make sure
3 this is accessible. Of course we have to make sure
4 that it's free to anyone who can't afford it. Of
5 course we have to make sure that it's not another
6 barrier.

7 But there's also an advantage to photo ID. In
8 modern 21st Century America if you don't have photo
9 ID, you are cut out of the mainstream of American
10 life. You can't really travel. You can't really
11 apply for a job. You can't really do a lot of things
12 in life that, frankly, would bring you into the
13 mainstream and make your life more rich.

14 Andrew Young points out we are helping the poor.
15 We are helping the indigent. We are helping many
16 people out of the mainstream of American life if we
17 get them a photo ID. They need to have it to be fully
18 participatory in America's life.

19 Election fraud, whether it's phony voter
20 registrations, illegal absentee ballots, shady
21 recounts or old fashioned ballot box stuffing can be
22 found in every part of the U.S. Fraud can be found in
23 rural areas and in major cities. If you want to find
24 some interesting witnesses for voter fraud, I suggest
25 you go to St. Louis and Detroit where we've recently

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1 had Democratic primaries for mayor.

2 In these Democratic primaries, the losing
3 candidates have presented some compelling evidence of
4 either massive voter official incompetence or outright
5 fraud. Freeman Hendrix, the losing candidate for
6 Mayor of Detroit in the Democratic primary in the last
7 election, says that the election was conducted under
8 conditions of massive fraud. There's an ongoing FBI
9 investigation into that, and he has called for photo
10 ID at the polls, and he's a Democrat and a minority.

11 Investigations of voter fraud are inherently
12 political because they often involve touchy situations
13 which people, frankly, don't want to address fully,
14 conditions that harken back to the great debates we
15 had over the civil rights struggle in the 1960s.

16 And I want to address that because we fought a
17 great civil rights hurdle in the 1960s to make sure
18 that poll taxes and other barriers to voting would be
19 dropped and would never again stain America's
20 conscience. We need to continue that struggle. It's
21 one of the reasons we just extended the Voting Rights
22 Act for the next 25 years.

23 But I would remind people that there is another
24 civil right at stake here. When voters are
25 disenfranchised by the counting of improperly cast

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1 ballots or outright fraud or, frankly, the
2 incompetence of election officials, their civil rights
3 are violated just as surely as if they had been
4 prevented from voting. The integrity of the ballot
5 box is just as important to the credibility of
6 elections as access to the ballot box is.

7 Voting irregularities have a long pedigree in
8 America, stretching back to the founding of the
9 nation. Many people thought that those bad, old days
10 had ended, just as many people think that there no
11 longer is any form of voter intimidation.

12 That's not the case. Voter intimidation does
13 continue. Voter fraud does continue. Let me give you
14 an example of how historical ghosts can come back to
15 haunt us.

16 In 1948, pistol packing Texas sheriffs helped
17 stuff ballot box 13, stealing a United States Senate
18 seat and sending Lyndon Johnson on his road to the
19 White House. That's been documented in Robert Caro's
20 biography.

21 CHAIRMAN REYNOLDS: Less than two minutes, sir.

22 MR. FUND: Amazingly, 56 years later came the
23 2004 primary election in that same part of Texas with
24 Representative Sero Rodriguez, a Democrat and chairman
25 of the Hispanic Caucus in the U.S. House, charged that

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1 during the recount a missing ballot box once again
2 appeared in south Texas with just enough votes to make
3 his opponent, the Democratic nominee, by 58 votes.

4 Political bosses, such as Richard J. Daley or
5 George Wallace, may have died, but they do have
6 successors. Even after Florida 2000, the media and
7 others tend to downplay or ignore stories of election
8 incompetence, manipulation or theft. Allowing such
9 abuses to vanish into an informational black hole in
10 effect legitimizes them.

11 The refusal to insist on simple procedural
12 changes, such as requiring a photo ID, improving
13 absentee ballot procedures, secure technology, and
14 more vigorous oversight, accelerates our drift towards
15 more chaotic and contested elections.

16 In conclusion, I would remind you that I never
17 expected to live in a country where officials in
18 places like Miami and other cities would hire the
19 Center for Democracy, which normally oversees voting
20 in places such as Guatemala or Albania, to send
21 election monitors to south Florida and other places in
22 the 2002 and 2004 elections. Scrutinizing our
23 elections the way we have traditionally scrutinized
24 voting in developing countries is unfortunately a
25 necessary step in the right direction.

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1 Before we get the clearer laws and better
2 protections, we need to deal with fraud and voter
3 mishaps. We need to have a sense of the magnitude of
4 the problem we have. I hope and trust that you as
5 Commissioners of this body can help in that process.

6 CHAIRMAN REYNOLDS: Thank you very much.

7 And I must say that I am struck by the amount of
8 consensus that I heard from all of the panelists. I
9 think that everyone shares the concerns regarding
10 accessibility and also the integrity of the --
11 maintaining the integrity of the ballot box.

12 At this point I'd like to open up the floor for
13 questions. Commissioner Kirsanow.

14 COMMISSIONER KIRSANOW: Thank you, Mr. Chairman.

15 First of all, I want to commend the staff for
16 putting together a splendid panel, and I want to thank
17 the panelists for great presentations.

18 And I've got several questions, but I'll just
19 ask one for now. And this, I think, would be to Mr.
20 Hearne.

21 Section 2 of the 14th Amendment is often viewed
22 as a predicate for the proposition that states have
23 the prerogative setting standards for voting
24 qualifications. Do you see any problem, 14th
25 Amendment problem, with having a uniform photo ID

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1 standard nationwide?

2 MR. HEARNE: Well, certainly both in the Senate
3 as well as in the House there has recently, within the
4 past several months been two bills, one passing the
5 House, the other being the McConnell amendment offered
6 in the Senate that would have established a uniform
7 federal ID.

8 Those were requirements that would have applied
9 only to federal elections. So in that sense, it is
10 something that would only be applicable under those
11 provisions to federal elections. I think that's an
12 appropriate action for the Senate, and I do not
13 believe it's inconsistent with the Constitution scheme
14 of devoting to states the responsibility or conducting
15 elections.

16 However, what I would also say is I would also
17 look at these kind of state election reforms as
18 examples that certainly the federal government can
19 embrace appropriately as well.

20 COMMISSIONER KIRSANOW: As you probably know, at
21 about the same time that that act was passed by the
22 House but was referred to the Senate, I think it was
23 the Georgia or Fulton County, Georgia court struck
24 down a very similar Georgia photo ID. It wasn't
25 simply photo ID, but that was the primary component of

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1 that piece of legislation; struck it down as violative
2 of the 14th Amendment.

3 And I'm not sure if you're familiar with the
4 features of them. I'm pretty sure you are.

5 I think some of the rationale had to do with the
6 fact that those photo IDs could be obtained or would
7 be obtained from DMVs, and that not every state or --
8 I'm sorry -- not every county within the state had a
9 DMV, and so it put a disproportionate burden on those
10 residents of counties where there wasn't DMV.

11 Given that that piece of legislation, that state
12 legislation in Georgia, at least is under challenge,
13 what, do you have any opinion as to whether or not
14 that legislation complies with 24th, 15th, 14th
15 Amendment or the Voting Rights Act?

16 MR. HEARNE: Certainly. In terms of Georgia, I
17 would note two things. Judge Murphy's decision that
18 you're speaking of, you know there's two pieces of
19 Georgia legislation. I won't go through the back and
20 forth. The initial piece of the Georgia photo ID
21 legislation, the problem was, it was found by the
22 court, it was not as accessible to a lot of people, as
23 you mentioned, as it should be, and I certainly
24 support making sure that any photo ID is accessible to
25 everybody.

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1 The reason Judge Murphy struck it down, and he
2 said in his opinion, there's no problem with the state
3 having photo ID. There was nothing wrong with photo
4 ID as the basis in his opinion. What he said in his
5 opinion was he said the problem here in Georgia was
6 and the reason he enjoined it was you had a photo ID
7 requirement and then you have an election two months
8 later. And even if you make it free, not everybody is
9 going to be able to get it in two months.

10 So I would suggest instead a situation similar
11 to the Carter-Baker recommendations, which is where
12 you require photo ID in the federal legislation, where
13 you have a lead time of two years or so. You know, so
14 many be can discuss that, whether it's two years or a
15 year or three years or whatever, but a reasonable
16 period of time for somebody to obtain the ID. That
17 eliminates that objection.

18 So, again, the Georgia case did not conclude
19 that photo ID is impermissible. It just said that
20 when you have it, you had better make sure that people
21 have the ability to access that ID for free.

22 COMMISSIONER KIRSANOW: Right, and the Federal
23 Election Integrity Act, I think, doesn't become
24 operative until I think the 2008 election, so it
25 gives that two-year lead time you're talking about.

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1 MR. HEARNE: That is correct, and so that
2 objection would be eliminated in that federal
3 legislation.

4 COMMISSIONER KIRSANOW: Thank you.

5 Thank you, Mr. Chairman.

6 CHAIRMAN REYNOLDS: Commissioner Melendez.

7 COMMISSIONER MELENDEZ: Yes. Thank you for
8 coming today, first of all.

9 Because the identification card seems to be what
10 many people term intimidation, I think it was
11 mentioned at 81 percent or so of America prefers or is
12 in favor of an ID, national card or something like
13 this. I don't know if the other percent includes many
14 minorities, including Native Americans. There's
15 actually an article that came out a couple of weeks
16 ago. There was a report just two weeks ago of how an
17 elderly Navajo woman, a woman who only speaks Navajo
18 named Agnes Laughter was blocked from entering her
19 chapter house to vote because she didn't have ID.

20 By Arizona and federal law, she should have been
21 given a provisional ballot. She then would have three
22 to five days to return to the polls with a form of
23 identification. But when asked, Ms. Laughter said she
24 didn't know if she could get back with an ID in three
25 days' time, living in a remote area. So she was told

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1 to wait outside.

2 Clearly, the polling workers did not understand
3 the law in this case, but this case also shows the
4 bigger problem that many Native Americans face in new
5 voter ID requirements. Unlike many other citizens,
6 Native Americans often do not carry official ID. They
7 may not be able to use mail-in voting procedures
8 because they need language assistance, the 203 of the
9 Voting Rights Act, and the remoteness of many tribes
10 make it particularly difficult to procure official
11 identification.

12 My question is in a scenario like this, how can
13 voter ID requirements be written or rewritten so that
14 it will allow American Indians, like Agnes Laughter,
15 to have their votes counted? That is a scenario that
16 has actually happened.

17 Anyone.

18 MS. BRAZILE: Well, just recently in the State
19 of Arizona, the Ninth Circuit Court of Appeals
20 rejected Arizona's Proposition 200 law that would
21 require voter identification at the polls on November
22 7th. It's already having an impact in Arizona and
23 other states where many of these state laws have been
24 overturned not just in Georgia, but also in Missouri.

25 Just recently Judge Callahan struck down

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1 Missouri's new identification law saying it's an
2 unconstitutional infringement on the right to vote.

3 The problem you have with all of these new so-
4 called voter integrity proposals to stop voter fraud
5 is that it impedes citizens' access to the ballot.
6 Many of these citizens don't have another day to come
7 back to show ID, and they are often told when don't
8 come with an ID that they must go home and get an ID
9 rather than, oh, here's a provisional ballot.

10 So this is, again, a problem that, you know, we
11 have to address and urge the citizens to stay, to go
12 ahead and fill out a provisional ballot and to make
13 sure that these poll workers who may have not gotten
14 the information, that they're not -- some citizens are
15 not required to show ID, if they showed ID at the time
16 of registration.

17 So the problem for that citizen, like many other
18 citizens is that unfortunately they would be
19 disenfranchised. They would be told to go home and
20 not come back, and they will not be given a
21 provisional ballot.

22 MR. FUND: I would just add to that I was born
23 in Arizona. I have many relatives there and am
24 certainly familiar with the situation regarding Native
25 Americans there. Some of those communities are

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1 extremely remote.

2 There are some special provisions. I would
3 reiterate what I said. We certainly need better
4 trained poll workers. Obviously that was a
5 bureaucratic mistake. We need to correct that.

6 Secondly, one of the things that's certainly
7 possible in those tribal areas is that you can have
8 some way if they forget their ID card, some way that
9 they can provide proof of it. The local tribal office
10 can have a fax machine. You could fax a facsimile of
11 the ID to the local authorities so that they actually
12 would not have to travel to a government agency.

13 You can also perhaps have a tribal leader vouch
14 for them and sign an affidavit confirming that they
15 have their ID presented to them locally, and they
16 would confirm that to other government officials.

17 There are certainly ways to do that, but I don't
18 think you should take these unusual cases in very
19 small rural areas and make that as the basis for a
20 blanket condemnation of the photo ID law because I
21 think there are ways you can address it.

22 CHAIRMAN REYNOLDS: Professor Pastor.

23 DR. PASTOR: Yes. I think there are two
24 distinct issues that are at the heart of our
25 discussion right now on identification. First is

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1 whether voter identification at the polls is a
2 legitimate and, indeed, a helpful way to improve the
3 integrity of the vote, as well as access.

4 And the second one is what's the best process.
5 If you assume that the answer to the first question is
6 yes, this is legitimate, what's the best process to
7 achieve that outcome?

8 I think on the first, it's helpful to realize
9 that of roughly 120 democracies in the world, more
10 than 100 have good, fraud proof voter ID. Mexico
11 undertook it with a very widespread, expensive
12 operation. They even have photo IDs on the
13 registration list. So Haiti did it. Iraq has done
14 it. I think the United States has the capability of
15 doing it, but we haven't done it before.

16 And I think there is a legitimate reason to have
17 people identify themselves as the person on the voter
18 list.

19 The second question is the harder one for
20 America right now, is how do we get there. There are
21 undoubtedly some people who think that pressing this
22 issue forward quickly may, in effect, restrict the
23 franchise. There's no doubt that if this is imposed
24 and you only have the two month time frame to get a
25 photo ID, that this is virtually impossible in many

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1 cases.

2 So we need to both have a longer lead time and,
3 more importantly, the Carter-Baker Commission made
4 very clear states have to play an affirmative role in
5 making sure that people who don't have driver's
6 licenses can get a free photo ID.

7 This is going to take time, and it's going to be
8 very expensive. When we explored different options in
9 the Carter-Baker Commission of how to do this, we
10 rejected a national identification card only because
11 we thought that if that's going to happen, it should
12 probably happen for security related reasons, and it
13 would be very expensive. We estimated it would cost
14 \$11 billion to do that.

15 It turns out that the real ID, which is the
16 instrument that the Carter-Baker Commission
17 recommended to be used may actually cost as much,
18 according to the National Association of Secretaries
19 of State, which would cause us all to rethink the
20 process by which we do this.

21 It won't be easy to do. There are many people
22 who don't have birth certificates, for example, in
23 this country, and getting one may not be easy in all
24 cases. But I think if this Commission on Civil Rights
25 were to recommend that photo IDs are a legitimate form

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1 of identifying voters, but what's not legitimate is to
2 go ahead with this without a good, extended process,
3 without the adequate resources, without an affirmative
4 role by the states, then we shouldn't do it.

5 But if we view this as legitimate, we need to
6 find the resources to do so.

7 Now, in our recommendation, we suggested using
8 the real ID card, which is a driver's license that is
9 upgraded by the 2005 law. And we estimated that
10 roughly 88 percent of the eligible American citizens
11 have driver's licenses, which is more than those who
12 are registered. It's more like 72 to 73 percent.

13 So if, in fact, you used the driver's license,
14 the upgraded driver's license, the photo ID, to
15 register those additional people you've already
16 expanded the registration base.

17 If on top of that, you have an affirmative role
18 by the state to go out by mobile vans to old homes, to
19 minority communities, to places in which we know are
20 under registered, you offer still another opportunity
21 to expand the number of people who would be registered
22 and would be eligible to vote as well.

23 So, in effect, the ID with the right
24 system can be used to expand access to voting and
25 expand those who are registered, at the same time

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1 improving the registration list beyond where it is
2 today.

3 MS. BRAZILE: I just want to highlight what Mr.
4 Pastor was saying, and that is 30 percent of Georgians
5 over 75 do not have a driver's license. The Brennan
6 Center for Justice also concluded that fewer than
7 three percent of Wisconsin students -- that's another
8 state that's trying to go to ID -- less than three
9 percent of students have driver's licenses listing
10 their current addresses. The same study found that
11 African Americans have driver's licenses at half the
12 rate of whites, and the disparity increases among
13 younger voters or only 22 percent of black men age 18
14 to 24 had a valid driver's license.

15 So this could be, again, another form of
16 discrimination and disenfranchisement unless we have a
17 process that is fair and open to everyone and not just
18 to go to Ken and have the resources to purchase an ID.

19 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

20 COMMISSIONER KIRSANOW: I just want to follow up
21 on what Professor Pastor said in terms of the cost of
22 this.

23 I think when the Congressional Budget Office had
24 estimated how much implementation of the National
25 Federal Election Integrity Act would cost, which act

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1 would provide ID for free to those who swore that they
2 were indigent and could not afford one, and the cost
3 was estimated to be about \$20 per ID, they thought
4 that the overall cost of that based on current likely
5 voters and registrants would be about -- I may be
6 mistaken. I read this quite some time ago -- in the
7 neighborhood of \$300 million.

8 But you said that you thought that the real ID
9 component would cost \$11 billion, and I'm curious as
10 how you came up with that estimate.

11 DR. PASTOR: No, I didn't. I was referring to a
12 report that's just come out by the National
13 Association of Secretaries of State and National
14 Governors Association, as well. I think the problem
15 is that when the real ID Act was passed, I think they
16 clearly underestimated. I mean, it was, to a certain
17 extent, an unfunded mandate. It shifted the burden to
18 the states to come up with the process by which to
19 determine who would get the photo ID and what the
20 terms would be.

21 The Department of Homeland Security has the
22 responsibility to set guidelines for determining
23 lawful status. Up until this moment, they still have
24 not done that. So we don't know for certain exactly
25 what is required of the states, and we won't know

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1 until the Department of Homeland Security makes it
2 clear how to determine lawful status, what people need
3 to do to show that, and how much it will cost for the
4 states to do it.

5 So we have two very wide estimates, the one that
6 you mentioned, and the one that's just come out in
7 this report, but we really don't know what the cost is
8 because the Department of Homeland Security has still
9 not set the guidelines for determining who gets a real
10 ID card.

11 CHAIRMAN REYNOLDS: Okay. Do states have
12 standards for hiring poll workers?

13 I mean specifically what I specifically have in
14 mind are situations where you have polling workers who
15 consistently give bad advice or make mistakes or who
16 intentionally deceive people, and so are there
17 standards for deciding who gets to become a poll
18 worker? And are there any type of sanctions for the
19 inability to correctly apply the rules?

20 And that's for anyone.

21 MR. FUND: Well, the most important thing, of
22 course, is the level of training, and as I mentioned,
23 we're seeing a growing shortage of poll workers around
24 the country because people lead busy lives and
25 increasingly it's left to the retired. And many of

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1 them, with the growing complexity of elections and the
2 growing burdens of trying to comply with all of these
3 laws and regulations that have been heaped on them,
4 don't want to do the job anymore, and we frankly have
5 to invest more in our poll workers.

6 Right now many states pay them \$20 in cab fare
7 or less. Some states do a better job of that. I
8 think that can be encouraged. We also encourage young
9 people, college students and high school students to
10 participate perhaps for credit, as well as for some
11 compensation.

12 The easiest way to make sure that a poll worker
13 does not misinterpret the rules or make a foolish
14 error which prevents someone from voting is to have
15 more than one poll worker there who has been
16 adequately trained. Therefore, they can check each
17 other.

18 It's highly unusual in sophisticated precincts
19 where you have several poll workers that a poll worker
20 will turn someone away and not be countermanded by the
21 supervisor or someone else who usually has a much
22 higher level of training.

23 I'm not saying that mistakes don't happen, but
24 I'm saying there are safeguards that can be built into
25 the system with enough resources and, frankly, enough

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1 training that will minimize that to a very large
2 extent.

3 MS. BRAZILE: And I want to say that, you know,
4 I've been an election day volunteer on numerous
5 occasions when I wasn't working for a particular
6 campaign or candidate, and many of these poll workers
7 are, as John mentioned, honest, decent Americans that
8 they're trying to do the right thing, but
9 unfortunately many states and counties do not have the
10 resources to properly train them on new election
11 procedures, on new election technology or, you know,
12 essentially in some cases many of them are overwhelmed
13 by just the number of people who are showing up now
14 and voting.

15 So I don't want to put all of the burden on
16 them. They are good, wonderful Americans who are
17 often in many cases volunteering their time with a
18 couple of dollars for cab fare and lunch, but we
19 really need to upgrade and professionalize our voting
20 operations and our voting apparatus across the
21 country.

22 MR. HEARNE: Mr. Chairman, I would echo that
23 observation. My experience with poll workers is that
24 these are patriots. These are people who are there.
25 What limited resources are paid to them, they're not

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1 there for that. They're there because they believe in
2 the system, and they're trying to contribute.

3 I would note that many states though have rules
4 that make it very difficult. For example, an election
5 worker, a poll worker can only be from a certain
6 jurisdiction, which limits the number of potential
7 people who can do it.

8 Some states have a requirement that says if
9 you're going to be a poll worker, you have to work the
10 whole day, which means you are sitting from 7:00 a.m.
11 until 7:00 in the evening. Some reforms in that
12 process. Again, the Carter-Baker recommendation, as a
13 number of them, would make it much easier for the
14 election officials to find poll workers and for the
15 poll workers to do their job.

16 One final point also in the Carter-Baker
17 recommendations is to have when you do have a problem,
18 and I would echo that the poll workers themselves,
19 it's more often if there is a problem that the poll
20 workers are responsible for, it's more often because
21 of incompetence or poor training, to have the ability
22 of the parties to participate in the candidates, to
23 participate with observers who are there in order to
24 monitor the process.

25 I know the Democrat party as well as the

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1 Republican party generally have observers and the
2 right under different states to put observers in
3 polling places in order just to monitor the process.
4 So if a problem does come up, you can get attention to
5 it quickly. If a voting machine breaks down, you want
6 to address it quickly before people are
7 disenfranchised.

8 DR. PASTOR: Yes, I would agree with what has
9 been said, but the average -- that poll workers are
10 dedicated individuals -- but the average time for
11 training is about two hours, and when you realize the
12 rules differ so dramatically from state to state and
13 county to county, it's impossible for a poll worker to
14 really know all of the rules properly.

15 When we send election observers around, and I
16 went around with them in 2004, we just focused on two
17 or three issues like provisional ballots. Every
18 single polling site I went to had implemented those
19 provisions differently.

20 And the other thing about poll workers is the
21 average age is 72 years. So if you're talking about
22 people having to be there from 7:00 to 7:00 p.m. and
23 then work to reconcile the vote count at the end of
24 that, these people are very tired at the end of that
25 day. It's very hard.

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1 At American University we're recruiting 100 poll
2 workers to go out to our polling sites in Washington
3 to work with D.C. elections in order to get both
4 younger people in there and people who are a little
5 bit more technologically advanced than the average 72
6 year old.

7 In Mexico, they look at poll workers like they
8 look at jury duty. It's a civic obligation. Ten
9 percent of the people in a precinct are called to be
10 trained. From that they take a small percentage of
11 the very best people. Average citizens, totally
12 trained when they go out there on election day. That
13 would be a good model for us as well.

14 We need to focus on poll workers. You're
15 absolutely right to focus on that right now. We're
16 not doing enough to train them. We're not doing
17 enough to get citizens actively engaged in that, and
18 frankly, the decentralization of our system makes it
19 very hard for poll workers to really know what the
20 proper rules are.

21 CHAIRMAN REYNOLDS: Commissioner Taylor.

22 COMMISSIONER TAYLOR: Thank you. And thank all
23 of you all for coming.

24 I wanted to actually echo a lot of comments that
25 have been made about the poll workers, and I come at

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1 this having served as counsel to Bob McDonnell when
2 there were over a million votes cast, and as you all
3 probably know, the margin of difference was 360 votes,
4 and it was an historic event, and being a lawyer, I
5 was, frankly, glad to be involved and in the middle of
6 it.

7 But I'm glad to say that I saw no fraud in
8 Virginia. I saw a lot of sloppiness, and at the poll
9 worker level what I saw was a lot of folks who were
10 well intentioned, well meaning, hard working senior
11 citizens who were tired, confused, and you are only
12 able to get to the nub of the matter when you had the
13 partisans on both sides looking over their shoulders,
14 but that only happened during the recount process
15 really.

16 So I want to echo all of those comments because
17 it was really my sense, and it really manifested
18 itself, I thought, in the fluctuations we saw, at
19 least, from the more sophisticated jurisdictions like
20 an Henrico County outside of Richmond, which is
21 somewhat affluent. Very little fluctuations in voting
22 patterns versus the City of Richmond or Newport News,
23 where you would flip two or 3,000 votes, and you would
24 dig into it, and it was just error because of the
25 training and different things in those communities.

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1 So at least in Virginia, at least, I really saw
2 the problem one of training.

3 One thing that bothered me, however, related to
4 electronic voting because the question -- and this was
5 a question the three-judge panel had to grapple with -
6 - in Virginia law at least there was not a requirement
7 that you had to show error relative to this electronic
8 voting machine. In fact, the law was silent on the
9 issue, and that put the issue before the three judge
10 panel.

11 I wanted to get all of you all's thoughts on
12 electronic voting machines and whether or not you
13 would, for example, require some type of paper trail
14 be mandated or, if not, whether or not for purposes of
15 a recount or questioning the vote tally, you would
16 require some type of finding of error relative to that
17 electronic machine.

18 It really is a question, and I don't know where
19 most states are, but it's a question that has not been
20 answered in Virginia.

21 DR. PASTOR: Well, since the year 2000, the
22 number of machines that are electronic have gone from
23 roughly ten percent to 40 percent. If you include
24 optical scans as electronic machines, it has gone to
25 80 percent.

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1 So we focused on that to a great degree, and
2 again, to realize the vulnerabilities of electronic
3 machines.

4 In the Carter-Baker Commission we recommended
5 that there should be a voter verifiable paper audit
6 trail because as we know, electronic machines like
7 computers do freeze up, and if you don't have a paper
8 audit trail, you don't know if you've lost votes. You
9 don't know if votes have been manipulated.

10 We also recommended that there be an audit of a
11 certain percentage of those machines, say, two
12 percent, so as to assess whether or not the machines
13 and the paper coincide with each other and to be able
14 to test that over time so that there wouldn't be a
15 bias in that system.

16 I think these are very important steps that need
17 to be taken with regard to electronic machines because
18 there's a huge accident waiting to happen.

19 In North Carolina, there was a vote on the
20 Agricultural Commissioner in 2004 in which the number
21 of votes separating the two leading candidates was
22 less than the number of votes that were lost as a
23 result of electronic machines that broke down, and if
24 we think of that perhaps happening on a statewide or a
25 national basis, this would be a terrible tragedy.

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1 So we need to move quickly to think about
2 implementing a verifiable paper audit trail and also
3 to make sure that the source codes, that there's
4 adequate oversight by state election commissions and
5 by the Election Assistance Commission to make sure
6 that the source codes of those electronic machines
7 cannot be manipulated and won't be manipulated.

8 MR. FUND: I would just add to that every time
9 that you have had technological advance in vote
10 counting, you have brought with it suspicion and
11 concerns, many of them legitimate, some of them
12 conspiratorial. Electronic voting machines are no
13 different.

14 We certainly have to spend more time and
15 attention. I've examined the background of some of
16 the procedures of the voting machine companies. Some
17 of these companies I, frankly, wouldn't hire. I think
18 it's a relatively new industry. There are going to be
19 some new entrants. I think quality control has to
20 improve.

21 One of the things we have to always ask
22 ourselves is why is it there are these concerns about
23 electronic voting machines? In part it's because
24 unlike ATMs, voting machines are produced on a much
25 cheaper basis with much less sophistication.

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1 In fact, the average electronic voting machine
2 only costs about 15 percent as your local ATM machine
3 bill because the ATM machine deals with money.

4 I would submit to you --

5 COMMISSIONER YAKI: Of course, that's not what
6 they sell it to the local government at.

7 MR. FUND: Of course not.

8 (Laughter.)

9 MR. FUND: That's why we need competing bids.

10 I submit the votes are at least as valuable as
11 money, probably far more so. We need to spend the
12 resources to make sure the electronic voting machines
13 do what they say they do.

14 Now, having said that, clearly I think some of
15 the fears about Manchurian computer programmers in the
16 back room manipulating the system and coming up with
17 completely different results are somewhat overblown.
18 I would remind you we have used optical scan computing
19 equipment to count the votes from optical scan ballots
20 from 25 to 30 years now. There has not been one
21 documented case of those counting systems, of those
22 computer systems, which bear a lot of resemblance to
23 the electronic voting machine computers, ever having
24 been manipulated to change an election result. There
25 has not been one documented case of that. So let's

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1 put this into perspective.

2 I'd also cite you Joe Andrew who is the chairman
3 of the Democratic National Committee. In fact, he was
4 hand picked by Bill Clinton. He is the only chairman
5 I know of a national political party who comes from a
6 technology background, and he has cautioned us that
7 while there certainly are legitimate concerns over
8 electronic voting machines, not to go too far.

9 He mentions, for example, that the Leadership
10 Conference of Civil Rights has generally supported
11 electronic voting because study after study has found
12 that the voters who are most likely to be helped by
13 these machines are (a) the disabled because they can
14 vote without assistance; (b) the less educated, the
15 machines resemble ATMs and are very easily used; (c)
16 lower socioeconomic groups who often trust machines
17 more than people; (d) the truly elderly because you
18 can increase the type size; and of course, people who
19 do not have English as a first language because the
20 machine could easily be programmed to accommodate any
21 number of languages, and citizens are often more
22 comfortable voting on those machines.

23 So we have to get the machines right, but the
24 machines are a significant technological advance. If
25 we get it right, they're going to make voting a lot

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1 easier and a lot more accurate.

2 CHAIRMAN REYNOLDS: I have a question for
3 Professor Pastor.

4 Wading through the Carter-Baker report, one of
5 the more significant recommendations is this notion of
6 moving responsibility from localities to the state and
7 then further up to the federal government, this
8 concept of interoperability.

9 It seems to me that in theory, I think, that,
10 well, it's an interesting idea, but if there is
11 resistance from the localities, from this shift in
12 power, in responsibility, I don't see how it will
13 work.

14 Could you just discuss how we would overcome the
15 barriers to the localities wanting to maintain the
16 traditional control and responsibility that they've
17 had?

18 DR. PASTOR: It's an excellent question, sir,
19 and I think it really goes to the heart of our
20 electoral problems because in the United States our
21 electoral system is so decentralized that it has
22 become dysfunctional. We don't have one election for
23 President. We don't even have 50 elections for
24 President, which is what the founding fathers
25 anticipated in the Constitution. We actually have

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1 13,000, and we discovered that, of course, in the
2 State of Florida in 2000 when the counties were the
3 ones that were really in charge, and they were often
4 implementing basic rules and standards in very
5 different ways from each other, and were responsible
6 for everything from the design of ballot to the
7 training of poll workers and everything else.

8 In the Help America Vote Act, by giving money to
9 the states through the Election Assistance Commission,
10 I think the intention was to help encourage the states
11 to impose uniform standards and, most importantly, a
12 single registration list which would be interactive
13 and which would be top-down.

14 CHAIRMAN REYNOLDS: Have all of the states
15 accepted money?

16 DR. PASTOR: All of the states have accepted the
17 money, but they haven't all implemented it in the way
18 that I believe it was intended with regard to
19 registration lists.

20 One of the biggest problems we have with the
21 registration list, that Thor and others have pointed
22 to is that up until very recently, most of the
23 registration lists were all decided at the county
24 level. The states had devolved responsibility to the
25 counties and municipalities and hadn't integrated the

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1 registration lists, and as a result you had grossly
2 inflated registration lists or inaccurate registration
3 lists.

4 The idea of HAVA was that there should be a
5 statewide, interactive top-down registration list.
6 It's not clear that all of the states have done that.

7 The states had devolved authority and responsibility
8 for elections for one good functional reason, which is
9 that each county has to concentrate on the bottom of
10 its electoral ballot, and therefore, you need to
11 program at that level.

12 And, secondly, they didn't want to put any money
13 behind this either, just as the federal government
14 didn't put one cent behind any of these elections
15 until the Help America Vote Act.

16 But if we are going to really modernize our
17 electoral system, it's our belief that the states are
18 going to have to assert a lot more responsibility for
19 this process and also to transform the administration
20 of elections so that it's more nonpartisan rather than
21 bipartisan, that it's impartial, that it's autonomous,
22 it's independent, and it's professional.

23 All of these qualities don't really exist in
24 many of the states right now. So I think increasingly
25 we feel the importance of focusing on administration

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1 and encouraging the states to play the role that the
2 founding fathers initially intended for them to play,
3 which is to be primarily responsible for statewide
4 systems rather than to decentralized the process to
5 the locality level.

6 CHAIRMAN REYNOLDS: Commissioner Yaki.

7 COMMISSIONER YAKI: Yes, thank you very much,
8 Mr. Chair. Thank you very much, panelists.

9 I guess I'll just be out front. I start off
10 looking at this as even in this discussion today
11 there's been kind of a kitchen sink approach to the
12 whole idea of there's something wrong with the way we
13 vote, and people throw out voter regs. People throw
14 out polling fraud, absentee, whatever it is. I'd like
15 to try and parse that out a little bit, much as the
16 U.S. Election Assistance Commission tried to parse it
17 out.

18 And, Mr. Chair, I don't know what our
19 jurisdiction is over that or not, but if that report
20 is being bottled up, I wonder if we can use our
21 subpoena power to get it out.

22 CHAIRMAN REYNOLDS: I agree.

23 COMMISSIONER YAKI: But I just want to let's go
24 through it piece by piece. There's been a lot of talk
25 about deadwood on the voter reg. rolls, more people

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1 than there are actual numbers in the population. What
2 hard evidence do we have that any of that has resulted
3 in people widespread, rampant, people voting who
4 shouldn't be voting because of where they are on the
5 registration list?

6 And let me just step back and say I know this
7 stuff from my own experience pretty well in
8 California, having run and won, and done many things
9 in many elections, watched how county registrars have
10 to validate the incredible initiative process in
11 California. I've seen Bruce Springsteen registered
12 five times. I've seen Mick Jagger registered. I've
13 seen all of these people who put their names on. They
14 generally get caught.

15 But I'm just wondering what do we know? Where's
16 the hard evidence saying that there's a correlation
17 between these vast disproportionate numbers of
18 registration in an area and actual voter, people using
19 those names and going to the polls and voting?

20 MR. FUND: Well, I'm a Californian, and I'll
21 just give you two examples very recently from
22 California. The City of Compton, where the mayor's
23 race has been embroiled in all kinds of federal
24 investigations. There have been documented examples
25 of massive fraud using absentee ballots, and the City

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1 of Industry where there's an ongoing federal
2 investigation along with a state investigation that
3 the city has basically suppressed voter registration
4 from some candidates. It's a small area, largely
5 commercial. The city council is in league with
6 various interest groups there, primarily the large
7 commercial industry, to prevent people from voting and
8 to prevent them from ousting the incumbent
9 establishment.

10 Those are just two cities in one state.

11 COMMISSIONER YAKI: Okay, fine. But I think you
12 just proved my point because you start talking about -
13 - the first thing you started to talk to was absentee
14 fraud, which is a wholly different creature than
15 registration fraud.

16 You don't have to have --

17 MR. FUND: It was also registration fraud in
18 Compton, and I can give you the specifics on it.

19 COMMISSIONER YAKI: Well, then I'd like to see,
20 one, how it's done and, two, what kind of prosecutions
21 have been brought. I mean, do you know how many
22 prosecutions have been brought over time?

23 MR. FUND: No. Let me be very clear about this.

24 One of the things that we have found, at least I have
25 found in my interviews with prosecutors are they put a

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1 lot of these cases on the bottom of their pile, and
2 for a very simple reason. It's a political hot
3 potato. You are guaranteed to anger half of the
4 political establishment if you bring a voting fraud
5 case. If you prosecute a Republican, you're going to
6 anger the Republicans. If you prosecute a Democrat,
7 you're going to anger the Democrats. And, of course,
8 there's the racial component. If you investigate
9 areas in which some people might be involved, you're
10 going to be often accused of having ulterior motives
11 in that respect.

12 I have quotes in my book from several
13 prosecutors who say they are very leery of prosecuting
14 these cases. One of the things that you find even the
15 prosecutions we do have, almost all of them are plea
16 bargained so that the person will serve only community
17 services or perhaps a fine. There are almost no cases
18 in which someone actually goes to jail.

19 I have talked to poll workers and people
20 involved in the business who say the prosecution of
21 voting fraud is at such a low level and so seldom
22 leads to jail time that, frankly, for many people it's
23 just the cost of doing business.

24 COMMISSIONER YAKI: But let me just ask you this
25 then. In the context of absentee voter fraud, how

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1 does an ID card do anything to prevent that?

2 MR. FUND: Well, you need to have both, and I
3 said that in my testimony. Photo ID at the polls is
4 important. I also think we frankly, as a public
5 policy question need to ask ourselves do we really
6 want the situation in which every year there's a
7 growing number of people who cast absentee ballots.

8 In 1980 only five percent of Americans voted
9 absentee or early. Now it's between 25 and 30
10 percent. Oregon has abolished the polling place. You
11 wake up on election day in Oregon. If you haven't
12 voted by mail, you're going to find it very difficult
13 to vote.

14 Washington State is moving in that direction.
15 California, over 40 percent of the ballots are cast
16 absentee. I think we have to question whether or not
17 we want to continue that process and literally have
18 people voting over an entire month.

19 You know, when does election day become election
20 month, and is that, frankly, constitutional? That
21 issue, I think, will eventually have to be addressed
22 with the courts.

23 We need ballot security for absentee ballots as
24 well. Professor Pastor has mentioned that you can
25 take the signatures on an absentee ballot and compare

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1 them for their digital equivalent. You can also using
2 very simple technology require someone to put their
3 thumbprint on a ballot and have that as a permanent
4 record to see if the absentee ballot matches the real
5 person.

6 You need both. You need --

7 COMMISSIONER YAKI: Well, let me go to the
8 second question then. I mean, one of the things that
9 the Election Assistance Commission report seemed to
10 indicate is that there is a greater potential for
11 absentee ballot fraud amongst all the different things
12 that people talk about.

13 Where is the evidence of polling place fraud, of
14 people on election day assuming different identities
15 and going?

16 And I guess part of it is, you know, all of this
17 gets to the little outrage part of America, which is
18 why is someone doing that, but I guess part of it has
19 to do with context as well. I mean, with all due
20 respect to Mr. Pastor, I get a little offended when
21 someone says, "Well, Mexico does it better than us."

22 Well, if you had Mexico's voting system 20 years
23 ago, you darn well would have changed it radically
24 because of the way that elections were administered,
25 but taking that aside, you take these instances, and

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1 they become anecdotal. They become, well, I know this
2 person or Mickey Mouse came or what have you.

3 The fact is over how many periods of time and
4 over how many electoral votes have been cast in the
5 past ten years and what percentage of those can anyone
6 estimate. What percentage of those had to do with out
7 and out, quote, unquote, fraud, and then what type of
8 fraud?

9 Because, again, that goes under the question of
10 why are we choosing all of these different remedies
11 that may not be appropriate for what it is we're
12 trying to guard against.

13 MR. HEARNE: Let me answer your question.

14 CHAIRMAN REYNOLDS: I'd just like to add
15 Commissioner Yaki raised a very interesting point, and
16 I would like to add that I think that he's basically
17 saying that this is an empirical question, and I think
18 that that question could be posed to both sides of the
19 equation, both voter intimidation and voter fraud.

20 Do we have a baseline? Do we have sufficient
21 evidence to quantify the nature of the problem?

22 That's one question, but I guess the follow-up
23 thought is that in this era of very close elections,
24 it doesn't matter because even if it is a very small
25 percentage, it could make a significant difference on

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1 whether the President is President Gore or President
2 Bush.

3 MS. BRAZILE: But so could a machine that is not
4 functioning properly.

5 CHAIRMAN REYNOLDS: I agree.

6 MS. BRAZILE: So could a machine that could be
7 tampered by using a palm device. That's why all of
8 these issues should be looked at in terms of electoral
9 reform comprehensive to clean up our electoral
10 process.

11 But I would urge the Commission to have that
12 report released as soon as possible from the Election
13 Administration Commission. We should denounce voter
14 fraud wherever we see it. If we know about a fraud,
15 if we see it happening, if we see some citizens
16 attempting to vote twice, there is a penalty for
17 anybody attempting to hack the system or to register
18 twice or vote twice, a penalty, \$5,000. That's why
19 voter fraud is rare. That's why you rarely read of
20 instances of voter fraud.

21 And let me just say in 2000 in Missouri, the
22 Secretary of State claimed that 79 voters were
23 registered with addresses at vacant lots, but there
24 was an investigation later, and they found out that
25 they were people who actually lived in those houses.

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1 The problem we have in America today is that our
2 voter registration lists are incomplete. They're
3 inaccurate, and they haven't been cleaned in such a
4 long time who knows who's on those. I'm sure Bruce
5 Springsteen, Mary Poppins, Santa Claus and everybody
6 else. Until we get serious about how we conduct
7 elections in this country, we will continue to have
8 problems.

9 MR. HEARNE: Mr. Chairman, let me answer the one
10 question.

11 Commissioner Yaki, you asked the question about
12 how many people have voted in person illegally that ID
13 would have prevented. Detroit Free Press did a study
14 in Michigan last December. They found more than 120
15 people cast ballots in the name of dead people.

16 Now, you might say 120 fraudulent votes that
17 could have been prevented by ID aren't enough, but
18 tell that to the citizens of Washington State where
19 they decided their governor's race by about that
20 margin.

21 You find very close as we saw in Florida, thin
22 margins, as Chairman Reynolds is noting. Thin margins
23 in elections are deciding not only who's our
24 President, who's our governor, who's our Senator being
25 decided. So 120 votes, as were found by the -- and

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1 that was in a limited sample in Michigan.

2 Now, by definition, a ballot cast at a polling
3 place in the name of a dead person is a ballot cast
4 fraudulently by somebody who, if they had to present a
5 photo ID, would likely have been prevented from doing
6 it. So it is a kind of reasonable common sense reform
7 to stop documented cases of vote fraud.

8 Donna, you mentioned the case in Missouri. With
9 the study that we did after the 2000 election, that
10 election by the Democrat Secretary of State, at that
11 point Becky Cooke, found that 48 people just appeared
12 at different polling places and cast a ballot
13 illegally without ever being authorized to do so.

14 So it is a documented fact when we look for it
15 that it happens. Now, many states don't have an ID
16 requirement at all. So it can go on very easily. The
17 only thing in St. Louis, Missouri that would prevent
18 Ritzy the Dog from casting a ballot that would void
19 mine or some other voter in Missouri is the fact that
20 somebody coming to the polling place pretending to be
21 Ritzy Mekler, who we found was a cocker spaniel, had
22 to first provide an identification.

23 That's why it's a confidence building. That's
24 why we actually find that these kind of ID
25 requirements, again, when we make sure everybody gets

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1 one and we have it for free; when we have that, you
2 find it actually increases participation in the
3 elections as the Professor Lott study found.

4 MR. FUND: Donna is, I think, very right. Not
5 all of the allegations ultimately pan out, and I think
6 we have to be discriminating.

7 However, remember we're dealing both in the case
8 of voter intimidation and in the case of voter fraud
9 with illegal behavior. So just to point to the number
10 of prosecutions, just to point to the number of people
11 who caught at it, since it's illegal behavior, you're
12 not going to catch the entire problem.

13 To say that it's rare is the same thing as to
14 say that we don't know the full extent of the drug
15 problem in this country because it's illegal. You're
16 not going to know all of it because people are not
17 going to volunteer information about it. It's in the
18 shadows.

19 I've actually seen academics --

20 COMMISSIONER YAKI: I really have --

21 MR. FUND: I've actually seen academic studies -

22 -

23 COMMISSIONER YAKI: To compare voting to the
24 drug problem is just a stretch.

25 MR. FUND: Commissioner Yaki, it's illegal

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1 behavior and it's in the shadows. One of the things I
2 have seen academic studies that have actually
3 purported to show that the level of --

4 COMMISSIONER YAKI: So is taking a bribe. Go
5 ahead.

6 MR. FUND: To repeat, I have seen academic
7 studies that have actually purported to show that the
8 level of voter fraud in this country is very small,
9 simply by going out and interviewing people in the
10 election process.

11 I'm sorry. You're going to have people who
12 commit these activities, whether they're intimidation
13 or whether they're fraud, who are not going to admit
14 it, and in addition, the election officials are not
15 exactly going to demonstrate or talk about the
16 frailties in their system because that reflects poorly
17 on their own behavior and their own performance.

18 COMMISSIONER YAKI: I just want to ask one
19 question about the photo ID bill that's floating in
20 the Senate now after it passed the House, and I'd like
21 to get your honest opinions about it because I seem to
22 have heard that all of you, and maybe I'm wrong,
23 believe that, one, it's a good idea; two, there's some
24 issues regarding accessibility -- I'm not saying all.
25 You know who I'm talking to, Ms. Brazile -- there are

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1 issues of accessibility that you think might be
2 something that would be worth addressing.

3 So one of the question is whether or not you
4 think that having this kind of new photo ID, whether
5 it's getting a birth certificate, whether it's
6 producing this kind of stuff, given the statistics and
7 given the fact that when you look at the demographics
8 of who would probably be impacted the most, it's lower
9 income. It's minorities. It's people whose English
10 is not their first language.

11 How do we get accessibility to those folks? How
12 do we do it in terms of money? How do we do it in
13 terms of outreach?

14 And given the fact that HAVA has been under
15 funded by \$800 million anyway, what realistic shot is
16 there that that's ever going to happen and should we
17 care, which I think we should.

18 DR. PASTOR: I think we should as well. Let me
19 answer both your first question and the second
20 question.

21 The first question is how much fraud is there
22 out there. My answer to that question is we don't
23 know. We don't know. I mean we could know if we
24 really cared, by doing something very simple that most
25 countries do, which is they have a poll book at each

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1 election site, and they register every irregularity
2 that occurs during the course of the day.

3 For example, one time I went to vote, and I
4 found that somebody had already voted under my name.
5 Now, I had no recourse at that point to find out why
6 this had occurred, whether there was some error or
7 whatever else, and the polling station itself didn't
8 keep any record of it. So we wouldn't know whether
9 it's a large number, whether it's no number or
10 whatever.

11 My personal view is that we're likely to see a
12 small number if it occurs. We don't know how much,
13 but even a small number is important because if
14 there's a close election, it makes a big difference,
15 and it's also --

16 COMMISSIONER YAKI: And I'm not disagreeing with
17 that.

18 DR. PASTOR: Okay.

19 COMMISSIONER YAKI: The second question is a
20 critical one that you just asked, which is if these
21 voter ID requirements are legislated without adequate
22 funding, without adequate time to make sure that they
23 are implemented in a way that's fair, accessible, and
24 indeed, can enlarge the area of registration, is this
25 a good idea?

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1 And my answer is no, and I think that's where
2 the Carter-Baker Commission -- the Carter-Baker
3 Commission was very clear in saying that we should do
4 a voter ID, but we have to do it in the right way, and
5 the right way means to expand the registration list to
6 make sure that a photo ID is accessible to people who
7 normally wouldn't have it or have a driver's license
8 or whatever else.

9 So I think if this panel could all agree that
10 those two elements are absolutely central to going
11 forward with this and that you can't go forward with
12 one without the other, than I think that would be a
13 step forward.

14 I think if this Commission were to issue a
15 similar statement along those lines, I think it would
16 be very positive, too.

17 MR. FUND: I would agree briefly with Bob Pastor
18 that the two do go together, that you do, in fact,
19 need to make the ID accessible, and I think that
20 that's a concern. I mean, as the judge in Georgia
21 said, there's no problem with ID. The issue is to
22 make sure that it is available to everyone.

23 Let me cite the Missouri case. In Missouri, the
24 Missouri legislature provided for nine mobile vans to
25 go around particularly to nursing homes. They also

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1 provided that there were more than 200 locations
2 throughout the state, one in every county, and those
3 mobile vans would go into particular neighborhoods,
4 and there was a two-year transition period.

5 Some may say they should have done even more to
6 provide the free ID. My point is that when the
7 legislature makes that kind of accommodation to make
8 sure everybody does have free ID, that should take the
9 partisanship out of the equation when we make sure
10 that people do have it.

11 And as Andrew Young said, that's why he embraced
12 the concept, because what we're doing is we're going
13 to those very same people, and we're saying not only
14 do you now have a free ID that allows you to vote. It
15 will increase your participation and confidence in
16 voting.

17 But it will also allow you to participate in all
18 the other things that we do in modern life that
19 require an ID. That's a good thing. That's a good
20 thing to enable and empower those people.

21 PARTICIPANT: A quick question. when you say
22 "free ID," let me just ask you: do you mean that the
23 actual ID itself is free? If you need any predicate
24 documents to get that ID? How does that work out?

25 MR. FUND: Yeah, there's two things. One, in

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1 our report we decided to build on the real ID law.
2 The real ID is the driver's license. Okay? Now, a
3 lot of states require you to pay for a driver's
4 license and presumably you would do that, but if you
5 don't have a driver's license, then we recommend the
6 equivalent of the real ID, which would be given to
7 people free, which would serve the same purpose, not
8 for driving but for identification purposes.

9 Secondly, it's very important that this
10 affirmative role by the state has to be incorporated
11 in it. Historically the United States is one of the
12 few democracies that doesn't go out to register
13 voters. It's passive. It lets voters come in.

14 We take this a very large step, and
15 Republicans, including Secretary Baker, accepted this
16 importance of this step, for the state to play an
17 affirmative role to go out with mobile offices to
18 certain areas which traditionally are likely to not
19 have identification cards of any kind. So that
20 requires additional money to do that and additional
21 personnel and resources as well to do that properly.

22 MS. BRAZILE: The Constitution prohibits any
23 form of payment in terms of voting, and as long as
24 there are millions and millions of Americans who do
25 not have access to getting the form of ID that would

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1 make them, therefore, eligible to vote and
2 participate, we should not impose this burden on
3 states and local government, which by the way have
4 failed already in implementing HAVA.

5 By not fully funding HAVA and the mandates that
6 they've imposed on the states, what we have now in
7 some states, we have just inconsistency in how the
8 rules are applied in different areas, different
9 counties, different neighborhoods.

10 So I'm opposed to the real ID provision until we
11 have such a system in place so that every American has
12 access to it and not just some Americans.

13 CHAIRMAN REYNOLDS: Commissioner Melendez.

14 COMMISSIONER MELENDEZ: Yes. The Election
15 Assistance Commission has that people support stronger
16 criminal laws and increased enforcement of existing
17 laws with respect to both fraud and intimidation.
18 Sometimes it seems like they're focusing on fraud
19 investigations, but little is done on intimidation,
20 that people direct you to the wrong polling place and
21 nothing really -- they're not held responsible for
22 those things.

23 The question is what additional criminal laws
24 are needed and how can this be made a high priority
25 for the Department of Justice.

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1 MR. FUND: Well, I would just submit that I
2 think resources are spent on tracking down voter
3 intimidation. If you go over to the Justice
4 Department, the Civil Rights Division, you will find
5 dozens and dozens of lawyers there, close to 200, and
6 their responsibility is to make sure that the Voting
7 Rights Act is enforced, and to make sure that
8 prosecutors go out and investigate claims.

9 A task force was sent down to Florida after 2000
10 by Attorney General Janet Reno. There are a lot of
11 people there, but if you want to find an attorney
12 there whose sole job is to investigate allegations of
13 voter fraud at the federal level, you'll find one
14 human being, one person.

15 So I would submit to you we need resources spent
16 on both, but I think if anything there's an imbalance
17 now.

18 MS. BRAZILE: There's no imbalance. There's no
19 imbalance. On election day both in 2000 and 2004,
20 there was direct contact to the Justice Department on
21 instances of voter intimidation and voter suppression.

22 I can recall there were calls, and this is under the
23 Clinton administration, there were calls directly to
24 the Justice Department reporting unauthorized
25 personnel blocking access to polling places in some

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1 areas in Leon County in Florida.

2 Senator Barack Obama has introduced S. 1975,
3 which is called the Deceptive Practices and Voter
4 Intimidation Prevention Act of 2005, which would make
5 it a crime punishable up to one year in prison and a
6 fine up to \$100,000 for knowingly deceiving a person
7 regarding the time, place, or manner of election in
8 any federal election, or qualifications for
9 restrictions on voter eligibility for any federal
10 election with the intention to prevent such person
11 from exercising their right to vote.

12 I was home in Louisiana in 2002 to help my
13 Senator, Mary Landrieu in her reelection. That was my
14 last election, and I was driving down Canal Street and
15 an individual walked out. He was paid. I don't know
16 who he was paid by, and said, "Election day is
17 Tuesday."

18 Election day was that Saturday. It was a runoff
19 election. So people are paid, and I said, "Yo, man,
20 you can go to jail for passing out that information,"
21 and when I told him he could go to jail, he said, "I
22 didn't know."

23 So the truth is that unfortunately these schemes
24 happen. I can tell you as somebody who has managed
25 and run campaigns all my life, all my life, I have

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1 seen some of the craziest things happen on election
2 day, but I have told my staff if anybody, any
3 volunteer, any paid worker or unpaid worker is ever
4 caught suggesting that any American should vote on
5 another day other than that election day, they would
6 be fired instantly and be turned into the proper
7 authorities.

8 So this happens unfortunately in our country.
9 I've seen it up close and personal, and we should
10 outlaw it, and we should make it a national crime for
11 people to knowingly stop and prohibit people from
12 voting.

13 MR. FUND: I can support that as well, but let
14 me just make one point about the 2000 Florida
15 election. Yes, there were reports of police cars in
16 one instance setting up a road block to try to catch
17 someone, and that was close to a polling place. There
18 were reports of other people being blocked from
19 voting. There were reports made to the Justice
20 Department. I agree.

21 But there were ten weeks in which Attorney
22 General Janet Reno and the Clinton administration
23 investigated those allegations. Please bring me the
24 report. Please bring me the report which found any
25 substantial substance to those allegations. Bring me

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1 the Justice Department report.

2 It does not exist.

3 MS. BRAZILE: This own Commission investigated
4 and went into Florida back in 2000, following that
5 election and heard directly from some of those
6 individuals.

7 MR. FUND: The Justice Department has far more
8 resources --

9 CHAIRMAN REYNOLDS: Okay, okay.

10 MS. BRAZILE: I just want to note that this
11 Commission did its job.

12 CHAIRMAN REYNOLDS: Okay. Mr. Hearne and then
13 Commissioner Kirsanow.

14 MR. HEARNE: I will briefly say Donna and I
15 share a concern over this point. The concern about
16 voter fraud and intimidation is a very real concern.
17 It does unfortunately happen. It's an ugly practice,
18 and it needs to stop.

19 Missouri passed, picking up on the Carter-Baker
20 recommendation, Missouri adopted a statute to increase
21 the felony for any effort just as you proposed, Donna,
22 in our Missouri Voter Protection Act exactly as was
23 recommended in Carter Baker that would say it is an
24 additional very serious felony, the top category of
25 felony for somebody to intentionally misdirect

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1 somebody in the polling place or otherwise to try to
2 interfere with somebody exercising their right to
3 vote.

4 It is wrong in this country, in the United
5 States of America that any person anywhere, any state,
6 any city wakes up on election day and tries to
7 exercise their constitutional right to vote and faces
8 some impediment in doing that or somebody who has a
9 scheme to try to prevent them. That is to be deplored
10 and seriously prosecuted, and I absolutely think
11 there's unanimity about our concern over that.

12 Again, you know, there's some good proposals to
13 do that. The organization I represent, the American
14 Center for Voting Rights, did a study of the '04
15 election and found some instances of voter
16 intimidation. Those were reported.

17 It doesn't matter by who those activities are
18 engaged in. It shouldn't happen at all by anybody
19 ever.

20 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

21 COMMISSIONER KIRSANOW: Thank you.

22 The Civil Rights Commission did go down to
23 Florida after the 2000 election after there were
24 scores of reports about voter intimidation and fraud,
25 and the Commission heard considerable testimony and

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1 was able to glean two instances in which there may
2 have been some blockage of voting.

3 One was the empty State Trooper car that was
4 across the street from a polling place. That was the
5 extent of it.

6 The other one was the traffic check point two
7 miles away and not even on the same road as another
8 polling place, which check point actually stopped --
9 the allegation was that there were a certain number of
10 people who were stopped, and the people who were
11 stopped were people with broken tail lights and the
12 usual check points.

13 So the Commission did go down there and despite
14 all of the allegations, that's the extent of what we
15 were able to find and the Justice Department wasn't
16 able to find anything else.

17 That's not to say there wasn't anything, but we
18 have to look at the empirical evidence, but my concern
19 goes more to Mr. Fund raised the issue of absentee
20 ballots. We have been concerned about a photo ID and
21 what kind of safeguard does photo ID present if we
22 have absentee ballots and there's proliferation of
23 that.

24 The Miami election of 1998, the mayoral election
25 was set aside because of irregularities with respect

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1 to absentee ballots, and just as an aside, in Florida,
2 again, race decided for President by 579 votes, and
3 the Miami Herald was able to discern 2,000 people
4 voting illegally. That changes the election or could
5 have the potential for changing the election.

6 With respect to the absentee ballots, does
7 Mexico have biometrics that they attach to their
8 ballots or the registration lists?

9 And if so, has there been any consideration
10 given or assessment done either by the Carter-Baker
11 Commission or elsewhere as to what the cost of any
12 kind of biometric protection either at the polling
13 place or by absentee ballot. It seems to me that they
14 would also encourage -- Ms. Brazile, you were talking
15 about multiple forms of identification having to be
16 produced. Sometimes poll workers aren't aware of the
17 fact that provisional ballots may obviate that need,
18 but if you've got one uniform standard that is
19 immutable, that no one can effectively even challenge
20 you, that that might be a means by which you can
21 insure both integrity and also access.

22 But I'm concerned about has there been a cost
23 assessment associated with that.

24 DR. PASTOR: First off, with regard to Mexico,
25 and Mr. Yaki is absolutely right, Mexico -- I started

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1 observing Mexican elections in 1986 and learned
2 everything I needed to know about electoral fraud.

3 (Laughter.)

4 DR. PASTOR: The Mexicans had perfected dozens -
5 - in fact, they had more words for electoral fraud
6 than Eskimos have for snow.

7 Because of that, however, they leaped over a 20-
8 year period to a system that is significantly more
9 advanced than ours, frankly, right now. They do have
10 biometric identification cards, which were introduced
11 and which 99 percent of the voting population have
12 them.

13 They have, as I said, not only biometric voter
14 cards, which they actually use for everything now
15 because they're so fraud-proof, but they also have
16 photos in the registration list of each of the people,
17 too.

18 They have not historically had a problem with
19 absentee ballots, until this last election where, for
20 the first time, they allowed people in the United
21 States and abroad to vote, but only a very small
22 percentage did, but they still needed their voter
23 card, and also they had some special sites for voting
24 as well.

25 With regard to the United States, 40 million

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1 Americans now need biometric cards for security-
2 related reasons, and I think that number will increase
3 over time as well. We did look into the cost of it,
4 and it's very expensive. There's no question.

5 We looked into a national identification card
6 system and estimated that it would cost \$11 billion to
7 do, but if you link that to a census, which of course
8 is coming up for the year 2010, that costs about \$8
9 billion. You connect the two, and you can do it at
10 significantly reduced costs as a result of it, but it
11 would be expensive to do that.

12 COMMISSIONER KIRSANOW: How does that work in
13 the absentee ballot context? Is there a biometric
14 signature affixed to the ballot itself which is then
15 checked against the voter registration roll?

16 DR. PASTOR: Yes. Most states, now when you do
17 register, you register with a signature that can be
18 digitalized, and therefore, when the absentee ballot
19 comes in and there's a signature on that, you can --
20 at the county level most states do have a machine that
21 can assess that that's the same signature as the
22 original one on your registration.

23 COMMISSIONER KIRSANOW: Have you considered any
24 libertarian objections to having some kind of
25 procedure such as that? It's not a fingerprint, but

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1 nonetheless, it's something that is specific to the
2 person.

3 And also, Mr. Fund had mentioned the
4 conspiratorial nature of new technologies as applied
5 to voting. You can just imagine the conspiracies that
6 may arise when people think that their signatures are
7 somehow digitalized and might be broadcast to users
8 that shouldn't have them.

9 DR. PASTOR: Well, we recommend a series of
10 procedural and institutional safeguards that go back
11 to the basic privacy laws that have had to deal with
12 that, you know, for regular commerce as well, but
13 there is that risk. There's no question about it.
14 The issue for public policy is how do you minimize
15 that risk and how do you introduce safeguards and
16 prohibitions on abuse.

17 MR. FUND: I am very concerned about absentee
18 ballots and their spread. At current trends, we're
19 going to have a nation half of which votes on election
20 day and half of which votes outside election day. I
21 question whether that's what the Founding Fathers or
22 even what the rest of us would want.

23 In addition, and I repeat this from my original
24 testimony, if you want to talk about voter
25 intimidation, have somebody have an absentee ballot.

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1 They are subject to intimidation from all kinds of
2 people around them, their spouse, their relatives, the
3 local political boss, their employer, their local
4 union official.

5 There were documented cases in Philadelphia
6 during a very close state senate election in the 1990s
7 in which poll workers went door to door, political
8 poll workers went door to door in Hispanic
9 neighborhoods saying (speaking Spanish), "This is the
10 new way to vote." They would hand them an absentee
11 ballot, and the person would have to mark it in front
12 of them, and the implication was that various
13 political blandishments and various political favors
14 that were traditionally given out in that neighborhood
15 were not going to be dispensed unless the absentee
16 ballot was filled out there right on the spot in front
17 of a political worker.

18 COMMISSIONER KIRSANOW: Similar allegations were
19 made in Florida, too, with respect to that type of
20 intimidation. My day job, which I'm moonlighting
21 right now, is with the National Labor Relations Board,
22 where we try to avoid mail ballot elections for some
23 of the same reasons you mentioned.

24 And there is also the component of if you've got
25 a mail ballot that is sent in a month before the

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1 traditional election day, there's a kind of
2 overarching Madisonian concern about, well, the person
3 hasn't been fully informed about the debate between
4 two candidates or a couple of propositions before he
5 has even cast a ballot. It's a prejudicial vote, in a
6 sense. He's simply making that determination without
7 being fully informed.

8 And aside from the cost, I have one kind of
9 macro question, and that is we have been talking in
10 somewhat of an informational vacuum here about
11 possibly voter intimidation, fraud, suppression, but
12 is there a baseline by which we can measure whether or
13 not those things are either increasing or decreasing?

14 I know it seems that all of these concerns seem
15 to be much more heightened since the 2000 election was
16 so close, but if we take that as the, do you sense
17 that these concerns are increasing? Are they
18 decreasing? Are we on the way to solving some of
19 these things?

20 MS. BRAZILE: I see it as increasing over the
21 past few years. Look. I've been trying to rally
22 Democrats since at least in the mid-1980s to look at
23 patterns of voter intimidation. As many people of
24 color and others began to register in large numbers, I
25 found problems. Some problems existed because

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1 individuals were, after being registered, they were
2 told they were no longer eligible. Some of it has to
3 do with felony, disenfranchisement, which, you know,
4 unfortunately disproportionately impact minorities and
5 poor people.

6 Some of it has to do with the fact that
7 when they registered to vote, they didn't fill out the
8 form completely, and when they went to actually vote,
9 they were told that they could not.

10 So I see some of the problems increasing.
11 Clearly, in 2004 with some of the voter intimidation,
12 suppression problems that occurred even weeks before
13 election day, I tried to at the time in 2004 work with
14 Ed Gillespie, work with the Republican party so that
15 we can as party operatives have polling monitors at
16 the polling places in a nonpartisan way, knowing that
17 we were both deploying thousands and thousands of
18 lawyers on election day.

19 So I think the best and the most effective way
20 to deal with these problems and what we're doing at
21 the Democratic National Committee -- I'm sure the
22 Republicans are doing something similar -- is that
23 we're trying to educate people far in advance of
24 election day to, one, check their status, to see, to
25 make sure that they're on the voter registration

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1 rolls.

2 Secondly, if they're experiencing any problems,
3 to call that 1-800 number so that we can try to
4 rectify the problem before election day. On election
5 day itself the majority of the calls that we get to
6 our 1-800 numbers are people who are lost. Their
7 polling place has changed. They don't know where to
8 go and vote. No one told them they could cast a
9 provisional ballot.

10 And then, of course, we have had instances where
11 they've arrived and there are no ballots or the
12 machines have malfunctioned or there are some other
13 problems.

14 So we try to document all of this. We try to
15 turn it into the proper authorities in real time, and
16 then we try to find ways to educate the general
17 population in the future.

18 MR. HEARNE: I would agree real briefly and note
19 that as we've seen, and, Chairman, you've noted that
20 we've seen increasingly elections decided by very
21 narrow margins, and with that you see particularly in
22 those battleground states increasing efforts of some
23 to "game the system" one way or another.

24 Donna made a point, and I think it's one that I
25 certainly share, and that is there is a role for both

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1 political parties to exercise responsibility by
2 working to educate their supporters to work together.

3 I know Ed Gillespie in the last election called on
4 Terry McAuliffe to jointly put out some teams to try
5 to resolve the problems.

6 These issues, I think, as Donna has identified
7 transcend partisanship because we need at the end of
8 the day, whether it's a Republican or Democrat who won
9 the election, all of the citizens need to be confident
10 that they, the citizens, the voters were the ones who
11 made that decision, not somebody gaming the system.

12 So that really does transcend partisan interests
13 in my view.

14 DR. PASTOR: I'm not sure that fraud and
15 intimidation are increasing, but I am sure that the
16 perception is that they are, and that's as significant
17 in the electoral process as the reality, which we're
18 going to always have difficulty ascertaining.

19 The good news, however, is that that's because
20 people are paying more attention and that they're
21 watching things much more closely in the electoral
22 process since 2000 than they ever have before, and
23 that's a positive things because that's compelling
24 this Commission and all of us to work on the full
25 range of problems that we face and hopefully modernize

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1 our system because I think the problem with the United
2 States is we were complacent for far too long with our
3 electoral system. We didn't pay attention.

4 The fact people are paying attention now is a
5 good thing, provided it's a motive for us modernizing
6 the system.

7 CHAIRMAN REYNOLDS: Commissioner Yaki.

8 COMMISSIONER YAKI: Well, actually my question
9 was for Mr. Fund as soon as he gets back. So I'll
10 pass for the time being.

11 CHAIRMAN REYNOLDS: Okay.

12 COMMISSIONER KIRSANOW: Yes, I was hoping Mr.
13 Fund would be here also, but the three remaining
14 panelists could address this.

15 We've had HAVA in place for a few years now.
16 We've got the Electoral Assistance Commission. We've
17 got the example that we wish to avoid of 2000 and in
18 2004 and the concerns about that, Washington State, a
19 lot of things where there have been litigations
20 surrounding elections.

21 We're about a month away from the midterms of
22 2006. In your opinion -- and I know this is something
23 difficult of definite ascertainment -- in your opinion
24 are we better prepared right now for having a cleaner
25 election than we were in the past or do we face some

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1 significant problems in the 2006 election?

2 MR. HEARNE: I will venture a quick prophecy
3 here, and that is that 2006, in answer to your
4 question, has some tools in place with HAVA, single
5 statewide voter roll, some improved processes, some
6 new technology. It all should help us to have more
7 comfort in our election process.

8 That said, '06, this midterm election will be
9 the first year in which an immense new system of
10 conducting elections is implemented, whether it's a
11 statewide roll or new technology as mentioned. That
12 raises, just the novelty of the way we're running the
13 election in '06 compared to all of these prior years,
14 that raises the greatest likelihood of real problems
15 in the voter rolls particularly, as well as the
16 machines, as people saw in Maryland.

17 That would be the concern I think we have this
18 year. It isn't that we're not moving in the right
19 direction, but this is our transition year for HAVA in
20 many ways, and that raises some real concerns.

21 DR. PASTOR: We're not prepared for November
22 2006, and there will be major problems. Hopefully
23 people will not just vote on the close races, which is
24 what we tend to do. If the election is not close,
25 people just walk away and don't ask the hard questions

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1 about whether the system is working.

2 There are, as Thor pointed out, a few areas
3 where we are a little bit better off. You've got a
4 provisional ballot that you didn't have before, for
5 example, but there are a lot of other areas that we're
6 a lot worse off because of the expansion of electronic
7 machines and the lack of paper verifiable audit
8 trails, the lack of adequate training, the confusion
9 over the sets of rules, and more importantly, the fact
10 that we are paying more attention.

11 We will find a lot more things wrong than we had
12 found in the past, not necessarily because there are
13 more things wrong, but we're watching for them now.

14 MS. BRAZILE: As I mentioned earlier in my
15 testimony, there's a citizen led campaign to encourage
16 states and localities to have emergency paper ballots
17 on hand for many of these jurisdictions that will be
18 using these new voting systems for the first time this
19 fall. That is one of my major concerns, these new
20 voting systems.

21 We saw it in Maryland. The Washington Post
22 reported the machines had to be rebooted. Many of the
23 access cards didn't show up on time. That created
24 problems. Some of the machines failed to communicate
25 properly with other units.

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1 In Massachusetts just recently in their primary,
2 the scanners did not work.

3 In Ohio there was a report out by the Cuyahoga
4 County Commission that their electronic scanners were
5 useless and delayed results for several hours and
6 almost a week before they had all of the reports
7 there.

8 In Illinois, in March they had problems with
9 their new technology cards, the results to be reported
10 four weeks late.

11 El Paso, Texas, I can go on and on.

12 The problem with these new voting machines that
13 have problems that can be tampered with, we don't know
14 the source codes for many of them. This is a problem
15 that I think is going to cause a lot of election
16 anxiety this coming November.

17 But by and large, I think the Democratic party,
18 I know, and I know many of the nonpartisan groups out
19 there are trying to educate people. The National
20 Association of Secretaries of State are encouraging
21 voters to check to make sure that they're on the voter
22 registration rolls before they show up.

23 And, again, we're calling on people to exercise
24 their right to vote and to request a provisional
25 ballot if they are told that their name is not on the

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1 registration rolls.

2 CHAIRMAN REYNOLDS: Okay. A quick question. We
3 haven't discussed this issue, at least not in depth,
4 but the issue of felons regaining their rights to
5 vote. Would any of the panelists like to discuss that
6 issue?

7 MS. BRAZILE: Well, there's no question that
8 there's a disproportionate number. I'm a southerner,
9 and there was recently a case in Alabama, I believe,
10 where this issue of American citizens who have paid
11 their dues to society, paid their debts back are still
12 disenfranchised. Over a third of African American men
13 in the deep South are ineligible to vote because they
14 lost their voting rights when they had a felony or
15 misdemeanor conviction.

16 I think it's time to re-enfranchise these
17 Americans. Again, the Brennan Center for Justice, I
18 like their reports because they're nonpartisan. It
19 doesn't put all of my partisan spin on it, but there's
20 an estimated 5.3 million Americans who are barred from
21 voting because of felony conviction. A
22 disproportionate number of African American and Latino
23 communities are impacted by this, and it's time that
24 we find ways to re-enfranchise these citizens.

25 I know some States like Iowa and Virginia,

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1 they're finding ways to have these citizens reapply
2 for their citizenship so that they can once again have
3 a voice in the electoral process.

4 But this is a problem and we should find ways to
5 address it.

6 CHAIRMAN REYNOLDS: Professor Pastor, any
7 comments?

8 DR. PASTOR: Yes. The Carter-Baker Commission
9 also came out clearly in favor of restoration of
10 voting rights for eligible citizens who have been
11 convicted of a felony, though it also singled out the
12 felony would not include a capital crime or one which
13 requires enrollment with an offender registry for sex
14 crimes once they've served their full sentence,
15 including any terms of probation or parole.

16 So, in short, we do believe that restoration of
17 voting rights for people who have committed felonies,
18 with the exception of these two elements.

19 CHAIRMAN REYNOLDS: So the report contains two
20 exceptions.

21 DR. PASTOR: That's right.

22 CHAIRMAN REYNOLDS: Would it be permissible for
23 states to entertain standards and consider other types
24 of felonies that would bar ex offenders for either a
25 longer period of time or permanently?

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1 DR. PASTOR: Well, the statement that I just
2 mentioned represented a compromise among the
3 Commission members. That was sort of carefully
4 crafted and --

5 CHAIRMAN REYNOLDS: I can imagine the work that
6 went into that.

7 DR. PASTOR: -- and so I think I'll just let --
8 if you're asking about the Commission's recommendation
9 on that, I'll just leave it with that, if I could.

10 MS. BRAZILE: And I will submit for the record
11 the report from the Brennan Center that also show that
12 80 percent of the American people favor returning
13 voting rights to citizens once they've completed their
14 sentences for felony convictions, and the United
15 States is the only democracy in the world that
16 disenfranchises people who have completed their
17 sentences.

18 So I would like to submit this for the record,
19 sir.

20 CHAIRMAN REYNOLDS: Sure, sure. Commissioner
21 Kirsanow.

22 COMMISSIONER KIRSANOW: There was some illusion
23 to the difficult -- not some. There was a lot of
24 illusion to the difficulties surrounding new
25 techniques, new standards for voting, and that that

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1 may prompt problems down the road in the future.

2 There are a number of studies that indicate that
3 many of the difficulties that we find in balloting,
4 for example, in Florida 2000, was a result of first
5 time voters being unfamiliar with the ballot, and
6 there was a recommendation, I think, made that the
7 parties, for example take it upon themselves to
8 educate voters.

9 But is there ever been any recommendations?
10 This seems to me to be Civics 101, something we should
11 be teaching in third, fourth, fifth grade. If there's
12 a new implementation of the voting procedure, we
13 should be teaching kids, hey, look. We've got a new
14 procedure. Here's how it works, or people in high
15 school who are about to become voters.

16 Has that been recommended by the Carter-Baker?
17 Because I didn't read the whole report.

18 MR. HEARNE: There has been a few points I would
19 note. Speaking for myself, I think it is a very good
20 thing for people to take children to polling places,
21 to encourage them, to model voting behavior, and for
22 example, in Missouri we recently amended our state law
23 to expressly allow parents to bring their children to
24 the polling place. That's a good thing. Previously
25 they were prohibited under some state laws.

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1 So states can do some certain things. I know
2 the Carter-Baker Commission -- I can let Bob address
3 that -- there was certainly very much of a desire that
4 we provide education and sufficient resources,
5 particularly with new technology so that everybody
6 gets to use it, particularly those who are
7 technologically challenged, older people who are not
8 as familiar with technology need to know this year
9 these voting systems.

10 And I think that's incumbent on local election
11 officials to make sure they do. Where they have the
12 ability to go into community centers or nursing homes
13 and provide a demonstration of the technology, and
14 again, as you were mentioning, particularly the new
15 generation of individuals coming along.

16 One final quick point I would note is in the
17 process, again, particularly with new technology,
18 particularly if you get into recounts, another factor
19 that I have certainly seen and you saw in Florida is
20 the need for a consistent standard for conducting the
21 election, not just running the election, but if you
22 get into any disputed issues, recounts, things of that
23 nature, to have a system in place that does not create
24 opportunity, advertent or inadvertent, for election
25 officials to exercise arbitrary discretion.

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1 COMMISSIONER KIRSANOW: Don't you think that
2 Bush-Gore decision almost mandates that? Maybe in a
3 way that may be somewhat difficult, but --

4 MR. HEARNE: I actually read it slightly
5 differently. I read Bush-Gore saying that under the
6 equal protection clause what we need to do is to make
7 sure a state unifies and standardizes their procedures
8 within the state.

9 So in my home State of Missouri, whether I'm
10 voting in St. Louis County or whether I'm voting in
11 Kansas City or Springfield, that those votes of
12 whomever are cast are going to be counted, processed
13 the same way, and if there's a recount, that the
14 process for reviewing them is the same.

15 And also that it's not open to just the
16 discretion of the election officials at that time.

17 One final point I can't let go by. Donna, you
18 mentioned the need for paper back-up ballots. I fully
19 support that. That is a very important procedure,
20 particularly this year as we get into that technology,
21 to have that kind of fail safe voting in place so we
22 don't disenfranchise any voter.

23 DR. PASTOR: There are studies that people are
24 intimidated from voting by electronic machines and by
25 the complexity of the process. They are just almost

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1 afraid to come to vote because they don't want to be
2 embarrassed.

3 And in our electoral system where the rules are
4 so different from county to county and from state to
5 state, we don't have the opportunity that a lot of
6 countries have where they spend a lot of money to show
7 everybody exactly how to vote, you know, what the
8 process is like. And they do it on television for 20
9 or 30 minutes.

10 We don't have that luxury when there are so many
11 different machines and so many different standards
12 within counties and whatever else. So to a certain
13 extent if they could have just statewide uniformity
14 and much more civic education on television because
15 that's where people are going to get it, not in the
16 voter guide because a lot of poor people don't read
17 the voter guides.

18 I think that's absolutely critical to the
19 process. Civic education is key. The Help America
20 Vote Act was the first time that the federal
21 government gave money for civic education to the
22 states, and the states used it, and there are many
23 studies that suggest that it really did help voter
24 participation because people got a little bit more
25 comfortable in explaining how the process was going to

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1 work.

2 MS. BRAZILE: You know, unfortunately, the
3 burden of election protection, voter education, voter
4 registration is placed on our candidates and our major
5 two-party system. We don't have often third party
6 organizations who are willing to go out there and
7 register voters, to educate them, and then to turn
8 them out to the polls. The system is now such that
9 it's so partisan out there, it's so highly charged
10 that many of these groups either opt out of
11 participating or it's left to some small minister in a
12 church who's still willing to go out there and do what
13 I call the Lord's work and encouraging people to get
14 out and vote.

15 So until we have a uniform system in place,
16 until we fully properly fund our election personnel,
17 until we fully encourage every citizen to take part in
18 our electoral process, we're going to have problems at
19 the polling place.

20 CHAIRMAN REYNOLDS: Okay. Commissioner Yaki.

21 COMMISSIONER YAKI: Thank you very much.

22 One brief statement and then I want to just ask
23 Mr. Fund a question, but we've talked a lot about how
24 this whole aura of electoral issues, whether there are
25 problems, whether it's intimidation, whether it's

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1 fraud, whether it's registration, whatever, undermines
2 confidence in our voting system, and I guess part of
3 me doesn't want you to answer because I really need to
4 ask Mr. Fund this last question, but perhaps after
5 that.

6 How much, as somebody who has been in politics
7 not as long as Ms. Brazile or as successful as Ms.
8 Brazile, but certainly as someone who has been there
9 and done campaign work at the national and state
10 levels, one of the things you find when you go out and
11 you talk to people is that the level of rhetoric, the
12 way that negative ads have taken over, the way that
13 campaigns are being waged has also had an impact on
14 really how people feel about the electoral system and
15 their willingness to participate in that process,
16 given that it's a question of just who is my least
17 worst choice.

18 That being said, to Mr. Fund, I just wanted to
19 finish on this one question that I had asked the
20 others regarding the idea of a national voter ID or ID
21 card or real ID or house ID, whatever you want to call
22 it, and the fact that at least amongst the three
23 people before you, if it were to come to pass and it's
24 still not sure if it will, the fact that it must be
25 free and that the predicates to getting it must be

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1 free in order to insure accessibility to it, I just
2 wonder if you agreed with that as well.

3 MR. FUND: I don't believe that you have to have
4 a system in which all 300 million Americans or all 220
5 million who are eligible to vote don't have to pay
6 anything for an ID card. I would submit to you that
7 the actual ID card itself should be free. I think if
8 you have to provide some documentation and you have
9 the means to do so, I think a small, modest charge
10 would be possible.

11 If you wish to declare that you do not have the
12 resources, I think that would be a very simple
13 procedure of just signing a statement to that effect,
14 no questions asked.

15 So I would submit to you free to anyone who
16 feels if they need it to be free or wish it to be
17 free, but I don't believe Ted Turner, I don't believe
18 Bill Gates --

19 COMMISSIONER YAKI: No, I understand.

20 MR. FUND: -- I don't believe those people
21 should necessarily be given a free birth certificate.

22 COMMISSIONER YAKI: But at least a minimal means
23 test if someone says I can't give --

24 MR. FUND: Absolutely.

25 COMMISSIONER YAKI: -- 20 bucks to get my birth

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1 certificate or 75 bucks to get my driver's license. I
2 just can't do it. You would say they could get that.

3 MR. FUND: Yes, but I do think that the actual
4 problem has been exaggerated. The vast majority of
5 Americans have some form of photo ID identification,
6 and I think in the vast majority of cases that can be
7 converted into the ID that meets the security
8 requirements that we're going to have in the next few
9 years.

10 Obviously this has to be phased in.

11 COMMISSIONER YAKI: I guess my concern is that
12 the vast majority does include some of my majority, or
13 non-majority.

14 MR. FUND: I think provisions have to be made
15 for them, and remember over 100 nations, as Professor
16 Pastor has pointed out, have encountered this problem.
17 Over 100 nations, and I can assure you the vast
18 majority of them have lower per capita incomes than we
19 do. They somehow have found a way to do that.

20 I believe best practices are here. Professor
21 Pastor is a noted expert on this, and I think that he
22 and his colleagues in academia have probably gone out
23 and done studies or can do studies on how to square
24 having a population that can't afford these documents
25 and yet 100 nations have been able to establish

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1 systems that give the people those documents.

2 COMMISSIONER YAKI: And I would just kind of go
3 back to the point I made before my question to you,
4 which is that we can talk about how 579 votes, 2,000
5 votes were found to be whatever. We don't know how
6 many non-votes were not cast because of intimidation.

7 We don't know how many votes were turned away because
8 of whatever. We don't know how many votes weren't
9 cast because people just have no faith in the system
10 entirely.

11 From the candidates, to the parties, to whatever
12 and how we overcome that I think is the greater
13 barrier to full participation, not just whether or not
14 we catch Harry Houdini voting three times in Michigan
15 or someone blocking a roadway and saying, "Sorry. The
16 election was yesterday. It's all canceled."

17 Beyond that, the bigger problem is how do we get
18 Americans to believe that this is something really
19 worth investing in. I mean I hate to say this. I'm
20 someone who just became a permanent absentee voter
21 because I couldn't stand going to my polls anymore and
22 waiting and watching these folks who admittedly are
23 good, patriotic Americans, but just bumbling up the
24 process with machines and the lines were just getting
25 incredible.

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1 Now, on the other hand, if we were in a
2 situation, as they did in the first election in South
3 Africa, where people were waiting eight hours in the
4 hot sun to vote and they had 99 percent turnout, I'll
5 take that.

6 MR. FUND: Sure.

7 COMMISSIONER YAKI: I'll take that.

8 MR. FUND: Well, I want to echo the comments in
9 your statement because we do have a problem. We rank
10 139th out of 163 democracies in the rate of voter
11 participation. If we continue to see voter
12 participation decline, we're going to have voting left
13 to the zealous or the self-interested few, and the
14 more we have those people vote and other people of
15 goodwill not vote, the more we're going to see harshly
16 personal campaigns that dispense with any positive
17 vision of our national future.

18 And some people would say the current election
19 resembles that.

20 MS. BRAZILE: I agree on that one. Less than 12
21 percent of Americans participated this past year in
22 the primary election, and we all know based on
23 previous elections that the average turnout in off-
24 season election mid-term is 37, 38 percent.

25 So this is a real problem. You know, many

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1 Americans feel overwhelmed as it is, and when they
2 hear of these new barriers, these new restrictions,
3 these new regulations, it intimidates certain people,
4 and we need to be cognizant of that when we put
5 forward new ideas to improve our democracy.

6 MR. FUND: I want to echo what my friend Donna
7 said, and that's this. Let's look at what the
8 customers are telling us, first time voters when you
9 turn 18. Only 11 percent of 18 and 19 year olds vote
10 in their first election. They're telling us
11 something. They're telling us that the process isn't
12 meaningful to them or that they no longer feel as if
13 it has anything to do with their daily lives or that
14 they've lost confidence in it because they're just
15 awash in cynicism.

16 CHAIRMAN REYNOLDS: Commissioner Kirsanow.

17 COMMISSIONER KIRSANOW: This is a relatively
18 narrow question. A couple of months ago we just
19 reauthorized temporary provisions of probably the most
20 successful piece of civil rights legislation that
21 we've seen, the Voting Rights Act. Commissioner
22 Melendez referred briefly to one of the provision,
23 Section 203. That one is primarily -- not primarily,
24 but in large part -- dealing with bilingual ballots
25 for Native Americans. But there's also the

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1 correlative 211 which deals with bilingual ballots
2 that's based on a certain calculation of the
3 percentage of perceived bilingual speakers in a
4 particular jurisdiction.

5 Has anyone done an assessment as to whether or
6 not -- let me back up. During the testimony before
7 the Senate Judiciary Committee prior to
8 reauthorization of temporary provisions of the Voting
9 Rights Act, there was some concern about the
10 complexity of certain ballot propositions, and when
11 you translate them you don't necessarily get an exact
12 translation from English to, say, Tagalog or English
13 to some other language.

14 Has there ever been an assessment done as to
15 whether or not that presents a vehicle for either
16 error or fraud that is the bilingual ballot and
17 anything that may be lost in translation?

18 DR. PASTOR: I'm not aware of such a study.

19 PARTICIPANT: Good question.

20 DR. PASTOR: And I think it's a very good
21 question. I think translating those referendums from
22 legalese into English is a far more difficult problem
23 I find, but I don't know the answer to your question.

24 So I don't know whether they've really looked at that
25 closely.

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1 As you know, some of the referendum are very
2 convoluted in English.

3 COMMISSIONER KIRSANOW: I have to read them
4 three, four times, actually, the Constitutional
5 amendments.

6 DR. PASTOR: So to be able to assure that they
7 are translated properly if we can't understand them,
8 well, is still a large problem.

9 COMMISSIONER KIRSANOW: I know in one case in
10 New York, for example. This wasn't about composition.
11 It had to do with two candidates for a particular
12 office, and I can't recall which language the
13 translation was made into. It my have been into
14 Chinese, but I'm not sure, but they transposed the
15 party affiliations from Republican to Democrat and
16 vice versa.

17 You can imagine in New York City the poor
18 Democrat who then became a Republican. You know, he
19 may not be very happy about that.

20 CHAIRMAN REYNOLDS: Commissioner Yaki.

21 COMMISSIONER YAKI: I just wanted to put a
22 little humorous story on that from the great multi-
23 lingual City of San Francisco that I used to represent
24 with such great joy, but one of the interesting things
25 had to do with how you took someone's name and put it

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1 in Chinese characters.

2 And I actually came up with the basic policy
3 that it would essentially be phonetic because Chinese
4 characters all have their own particular
5 pronunciations. And the reason we did that is because
6 a couple of people decided to take great liberties
7 with their names and create whole new Chinese names
8 for themselves. Some of them were resembling ancient
9 Chinese leaders of old history that people would
10 recognize and go, "Oh, this must be the relative of,"
11 you know, whoever it was.

12 So we had to put a stop to that because people
13 were taking great creativities that they can only do
14 in San Francisco.

15 CHAIRMAN REYNOLDS: Okay. On that note, I would
16 like to conclude.

17 DR. PASTOR: I'm sorry. May I just correct one
18 thing? At several points in time I referred to these
19 estimates on the real ID law of being as much as \$11
20 billion, and I said that it was a report by the
21 National Association of Secretaries of State.

22 That's incorrect. I just found it. It was from
23 the National Governors Association and the National
24 Conference of State Legislatures. So I'd just like to
25 correct that part of the record.

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1 CHAIRMAN REYNOLDS: Thank you.

2 Well, I would like to thank all of the panelists
3 for an excellent, excellent presentations. I think
4 that his has been quite enlightening, and with this
5 era of close elections, this conversation is sorely
6 needed, and with any luck we can continue this process
7 that we've started to improve the efficiency of our
8 national and state and local elections.

9 Thank you.

10 (Whereupon, at 3:29 p.m., the meeting and
11 briefing were concluded.)

12

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